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Public version

Statement of Issues

J&P Turner / T&G Fresh

10 September 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).[1]

2. As required by the Commerce Act 1986 (the Act),[2] we assess mergers and acquisitions using the substantial lessening of competition test, which we describe further below.

3. To give clearance to the Proposed Acquisition, we must be satisfied that it 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 Issues (SoI) sets out the competition issues on which we are not currently satisfied following initial investigation. This is so JPT and T&G Fresh (together, the Parties) and other interested parties can provide us with submissions and, where available, supporting evidence relating to those issues.

5. In reaching the preliminary views set out in this SoI, we have considered the information provided so far by the Parties and other industry participants. We have not yet made any final decisions on the issues outlined below (or any other issues) and our views may change, and new competition concerns may arise, as our investigation continues.

The issues we are continuing to investigate

6. Based on the evidence collected to date, we are not currently satisfied that the Proposed Acquisition would not be likely to substantially lessen competition in a market in New Zealand. We are continuing to investigate the competitive effects of the Proposed Acquisition.

7. We have not yet reached a definitive view on the boundaries of the relevant markets for assessing the competitive effects of the Proposed Acquisition. However, our preliminary view is that it is appropriate to define separate functional markets for the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers (eg, supermarkets, green grocers, meal kit delivery companies).[3]

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1 A public version of the Application is available on the case register on our website.
2 The Act, s66(3).
3 We use “fresh produce”, in the context of the Proposed Acquisition, to refer to fresh fruit and vegetables.

7.1 For the acquisition of fresh produce from growers, we are continuing to consider whether it is appropriate to define and assess narrower markets by produce category or type, or by grower size. We consider that at least some regional geographic markets are likely to be appropriate, although this may vary by produce type.

7.2 For the supply of fresh produce to wholesale customers, we consider that a single product market (for all produce types) with regional geographic markets is likely appropriate. We are continuing to consider whether the participants in the supply markets should be limited to wholesale suppliers whose offering includes a 'full service' physical market or trading floor, which the Parties and Market Gardners Limited, trading as the MG Group (MG), offer or whether it should also include all wholesalers (ie, even those that do not offer 'full service' physical markets) and/or direct supply between growers and wholesale customers.

8. We are continuing to explore the possible competitive effects of the Proposed Acquisition in these markets. At this stage, the issues we are continuing to investigate relate to potential:

8.1 unilateral effects in each of the relevant markets for the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers;

8.2 coordinated effects in each of the relevant markets for the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers; and

8.3 vertical effects in the relevant markets for the acquisition of fresh produce from growers.

9. Our investigation to date has focused on assessing the closeness of competition between the Parties, the degree of constraint from alternative wholesalers, the potential for new entry or expansion in the market, and the countervailing power of growers and wholesale customers.

10. We are not currently satisfied that the Proposed Acquisition would not substantially lessen competition due to unilateral effects, for the following reasons (which are discussed in further detail below):

10.1 the Parties appear to compete closely to acquire and supply fresh produce in at least some categories and locations, and for certain growers and/or wholesale customers. The Proposed Acquisition would remove the existing competitive constraint that the Parties impose on one another; and

10.2 we are not currently satisfied that the degree of competitive constraint imposed by other wholesalers and/or the countervailing power of growers or wholesale customers would be sufficient to constrain the merged entity.

11. We are not currently satisfied that the Proposed Acquisition would not substantially lessen competition due to coordinated effects and will continue to consider the extent to which the Proposed Acquisition may make coordination more likely, complete, or sustainable in any relevant markets.

12. For individual produce categories where the merged entity would be vertically integrated into growing and supply (such as tomatoes, cucumbers, courgettes and cherries), we are also not currently satisfied that the Proposed Acquisition would not substantially lessen competition due to vertical effects. We will be further considering the merged entity's ability and incentives to use its position in supply markets to foreclose upstream rivals (ie, independent growers) or otherwise disadvantage independent growers in relation to these markets.

Process and timeline

13. We have agreed with JPT to extend the period within which we are to make a decision on the Application until 5 November 2026. Further extensions may be agreed between the Commission and JPT.

14. We invite submissions and supporting evidence from the Parties and other interested parties on the issues raised in this SoI. We request responses by close of business on **23 September 2026**.

15. We request that parties provide confidential and public versions of any submission made where relevant. Public versions of all submissions received will be published on our website with appropriate redactions.[4] All parties will have the opportunity to cross-submit on the public versions of submissions received from other parties. Cross-submissions must be received by close of business on **5 October 2026**.

16. 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 us at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

Our framework

17. The Act requires us to assess mergers and acquisitions using the substantial lessening of competition test. The Act, together with relevant case law, governs the way in which we consider all mergers, including the Proposed Acquisition. Our approach to this assessment is also based on the principles set out in our Mergers and Acquisitions Guidelines.[5]

18. We determine whether a merger or acquisition is likely to substantially lessen competition in a market by considering what would change with a merger. We do so by comparing the likely state of competition if a merger proceeds (the scenario with

[4] Confidential information must be clearly marked (by highlighting the information and enclosing it in square brackets). Submitters must also provide a public version of their submission with confidential material redacted. At the same time, a schedule must be provided which sets out each of the pieces of information over which confidentiality is claimed and the reasons why the information is confidential (preferably with reference to the Official Information Act 1982).

[5] Commerce Commission, Mergers and Acquisitions Guidelines (May 2022). Available on our website here.

a merger, often referred to as the factual) with the likely state of competition if a merger does not proceed (the scenario without a merger, often referred to as the counterfactual).[6] This allows us to assess the degree by which the Proposed Acquisition might lessen competition.

19. Whether or not a lessening of competition as a result of a merger is substantial depends on the particular circumstances.[7] It is the degree to which competition has been lessened which is critical. A lessening of competition does not need to be felt across an entire market, or relate to all dimensions of competition in a market, for that lessening to be substantial. A lessening of competition that adversely affects a significant section of the market may be enough to amount to a substantial lessening of competition.[8] Further, in markets that are already concentrated, a smaller change in competition with a merger may amount to a substantial lessening of competition than would be the case in markets that are less concentrated to begin with.[9]

20. In considering the Application and assessing whether the Proposed Acquisition is likely to substantially lessen competition, our focus is on what would change with the Proposed Acquisition. Unless we are satisfied that any lessening of competition as a result of the Proposed Acquisition is not likely to be substantial, we cannot give clearance.

Our investigation to date

21. Our investigation of the Proposed Acquisition has to date seen us gather information from the Parties and third parties through interviews, information requests, a survey of growers, and submissions.

22. With the very large number of growers potentially impacted by the Proposed Acquisition, a survey was one means by which we have sought to gather further information from this group.

23. The survey, by design, offered an additional channel for us to receive feedback from individual growers within the industry, rather than being a tool for statistical estimation based on a representative sample.

24. Horticulture NZ sent the survey to its member growers via its newsletter. We received 49 responses, although some of these were incomplete. We are using these responses for the purpose of testing or corroborating other evidence and identifying growers who we may look to seek further information from (rather than treating responses as representative of all growers).

25. The survey asked for:

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6 *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

7 *ANZCO Foods Waitara Ltd v AFFCO NZ Ltd* (2005) 11 TCLR 278 at [240] (CA).

8 *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

9 M Sumpter, *New Zealand Competition Law and Policy* (CCH, Auckland 2010) at 186-187, discussing the decision in *Air New Zealand v Commerce Commission* (2004) 11 TCLR 347 (HC).

25.1 information on the extent to which growers currently supply fresh produce via wholesalers;

25.2 information on the extent to which growers currently supply fresh produce direct to wholesale customers (ie, bypassing the wholesalers); and

25.3 views on the Proposed Acquisition and other information, such as its impact on growers' available options for the sale of fresh produce.

26. We are intending to reopen this survey to get a greater number of responses from growers during the next stage of our investigation.

The Parties

The applicant – JPT

27. JPT is part of the J&P Turner group of companies, a family-owned and managed fresh produce business. JPT wholesale supplies and exports locally grown and imported fresh produce across New Zealand through its subsidiary, Fresh Direct.[10] JPT also exports produce internationally (ie, via its export business, JP Exports Ltd).[11]

28. Fresh Direct wholesale supplies and distributes locally grown and imported fresh produce throughout New Zealand including through six wholesale fresh produce markets (trading floors) in Auckland, Hamilton, Tauranga, Palmerston North, Wellington, and Christchurch.[12]

29. It also offers the following related services:[13]

29.1 packing in its Christchurch facility for supply to its wholesale customers;

29.2 ripening at its Auckland and, to a lesser degree, Christchurch facilities;[14]

29.3 temperature-controlled metro transport via its own local fleet (though it relies on third parties for long-haul transport); and

29.4 processing of certain fruits (eg, sliced pineapple, mango, melon) into packs, typically sold by major supermarkets.

30. JPT does not grow its own produce, with the exception of cherries which it mainly grows for exports.[15]

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10 The Application at [6] and [50].

11 The Application at [53a].

12 The Application at [51].

13 The Application at [51].

14 JPT does not provide ripening services outside of the wholesale supply of produce. The Application at FN26.

15 The Application at [6].

The target – T&G Fresh

31. 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.[16]

32. 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).[17]

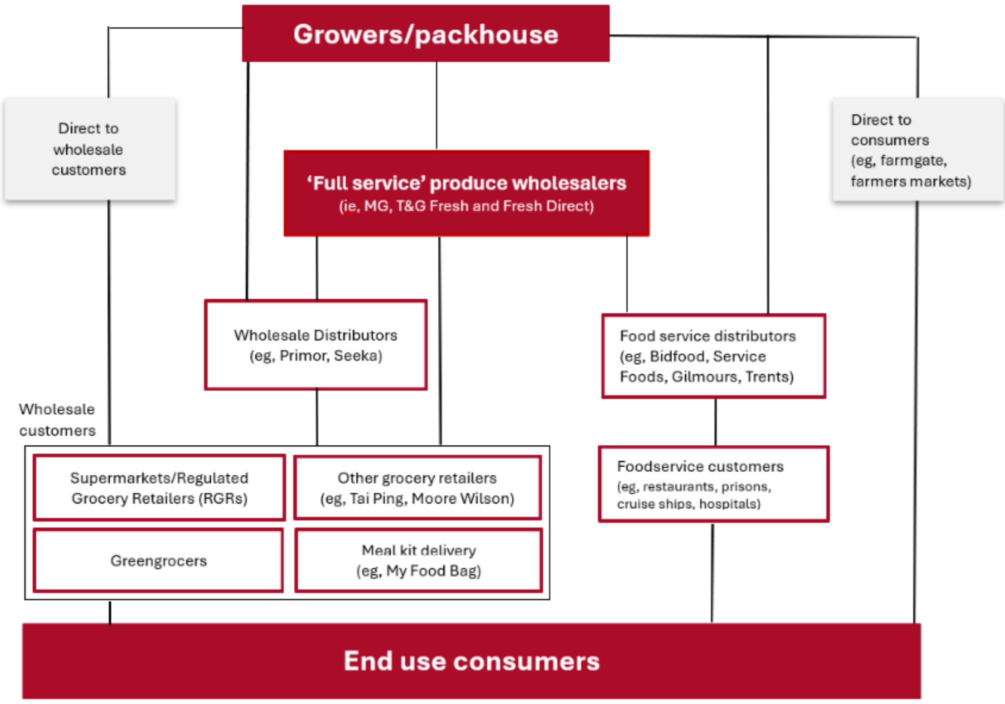
33. T&G Fresh grows a portion of its own supply – namely, tomatoes, cucumbers, citrus, berries, cherries, and other stone fruits.[18]

34. 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.[19]

Industry background

35. Figure 1 sets out the fresh produce supply chain in New Zealand at a high level.

Figure 1: Fresh produce supply chain[20]



16 The Application at [57].
17 The Application at [58] and FN25.
18 The Application at [4].
19 The Application at [58] and FN26.
20 Figure 1 reflects our views on the fresh produce supply chain based on Table 1 in the Application and evidence gathered to date. We note that growers include both growers in New Zealand and growers overseas. Growers overseas sell produce to produce wholesalers, distributors, and customers directly.

36. As shown in Figure 1 there are a number of ways in which fresh produce gets from growers to end consumers. There is some direct supply from growers to wholesale customers, food service distributors and also to end consumers. A significant channel to market for growers is also through wholesalers of fresh produce.

37. Wholesalers are intermediaries in the supply chain. They acquire fresh produce from growers and supply (ie, on-sell) fresh produce to wholesale customers. Alternatively, they facilitate the sale of growers' fresh produce to wholesale customers (and charge commission). In either case, wholesalers aggregate supply of and demand for fresh produce, and facilitate growers selling their produce to wholesale customers (and equally wholesale customers acquiring fresh produce). Evidence before us (discussed later in this SoI) indicates that the role wholesalers play in the fresh produce supply chain is important for both growers and wholesale customers.

38. Given the perishable nature of fresh produce, market participants must work efficiently to get produce from growers to final end consumers.[21] How quickly fresh produce needs to get from growers to consumers may vary by produce category depending on factors such as perishability and how long produce can be kept in storage.

39. Amongst wholesalers of fresh produce, we have observed a distinction between:

    39.1 **'full service' wholesalers:** who wholesale a wide range of fresh produce and operate wholesale fresh produce markets around New Zealand. These are large open market floors that act as central physical locations where wholesale customers can purchase a wide range of fresh produce in bulk at spot prices, and where growers' produce can be aggregated and reach a wide range of customers across produce grades around New Zealand. We note that even for wholesalers that operate these trading floors, produce is also sold remotely (ie, online or over the phone) in locations where they operate trading floors and in locations where they do not;[22] and/or

    39.2 **wholesale distributors of fresh produce:** who may not offer a full range of produce like the 'full service' wholesalers or do not operate 'full service' physical fresh produce markets (ie, market floors). These wholesale distributors instead buy produce from growers and on-sell it to customers (usually through structured contractual arrangements). These distributors may work closely with growers, may import produce and supply a range of customers (from very small customers to large supermarkets) and export markets. Because they are not offering fresh produce market floors, these distributors generally may not face the same incentives to offer a comprehensive set of produce types or to buy multiple grades of the same produce type. Instead, these distributors may specialise in narrower produce categories and regions.[23]

21 The Application at [25].

22 See, for example, the Application at [33]-[35].

23 For example, Primor Produce specialises in avocados, citrus, melons, and greens (see https://www.primor.co.nz/produce). Seeka specialises in kiwifruit, kiwiberries, avocados, persimmon,

40. The Parties are both 'full service' national wholesalers. There is one other major 'full service' wholesaler that operates nationally, being MG which operates wholesale produce markets in the locations in which the Parties overlap, as well as further locations in Nelson, Dunedin and Invercargill.

41. We note some wholesalers operate on trade terms (ie, acquiring produce as principal and on-selling it) and some operate on consignment terms (ie, selling produce as an agent on behalf of growers either through physical trading floors or through brokered supply arrangements).

42. As Figure 1 shows, New Zealand's Regulated Grocery Retailers (RGRs) (ie, Woolworths New Zealand Limited (Woolworths), Foodstuffs North Island Limited (FSNI) and Foodstuffs South Island Limited (FSSI)) are major buyers of fresh produce, both direct from certain growers and through wholesalers.[24] We note in terms of RGRs that:

    42.1 in our decision regarding the Turners & Growers/Freshmax merger, the Commission observed that there had been an industry shift towards supermarket chains and other customers seeking produce directly from growers, bypassing the wholesale channel. At the time of that decision, the Commission observed that industry participants expected this trend to continue in the future.[25] We note that market feedback in this investigation, however, suggests that this trend may have since largely levelled off, with sourcing patterns now fairly stable.[26] However, grower consolidation has continued;[27] and

    42.2 RGRs are not direct competitors of 'full service' wholesalers in the supply of fresh produce to wholesale customers. The wholesale groceries offering that the RGRs are required to make available to independent grocers does not include fresh produce. But the RGRs do compete to some degree with the 'full service' wholesalers to acquire fresh produce (as well as being major customers).

43. The supply chain is concentrated on both sides of the wholesale level (ie, wholesale supply and demand), and concentration has been rising over time in relation to both wholesale and grower markets. The number of commercial growers has decreased

citrus, and the import of bananas, pineapples, jujube, plums, pears, and papaya (see https://www.seeka.co.nz/our-produce). Healthy & Fresh specialises in Asian ethnic produce such as bok choy, tong ho, lemon grass, Chinese yam and lychee (see https://www.healthyfresh.co.nz/product/).

24 We note that the RGRs include Woolworths, FSNI, FSSI, and any of their interconnected body corporates, successors, franchisees, or transacting shareholders as defined under the Grocery Industry Competition Act 2023.

25 Turners & Growers Fresh Limited and Freshmax NZ Limited [2020] NZCC 6 at [65].

26 For example, [ ] This is also consistent with feedback from [ ]. Commerce Commission interview with [ ].

27 Commerce Commission interviews with [ ] and [ ]

from about 7,000 to 4,300 in the last 20 years.[28] The number of 'full service' wholesalers has also decreased from four to three as a result of the Turners & Growers/Freshmax merger in 2020.

44. Further, growers' locations may not align with the majority of market demand. For example, stone fruit is mostly grown in Central Otago but a large proportion of fruit is destined for export or Auckland markets.

Market definition

45. Market definition is a tool that helps to identify and assess the close competitive constraints a merged entity is likely to face post-acquisition. We define markets in the way that we consider best isolates the key competition issues that arise from a specific merger or 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.[29]

46. This has particular relevance in cases such as this, where there is the potential for a very large number of markets. An overly granular market definition involving potentially a very large number of individual geographic and product markets would require the Parties to satisfy us that there would be no substantial lessening of competition in every market. That could be unworkably resource-intensive and untimely for market participants, the Parties, and us. However, we do need to undertake sufficient market definition analysis in order for us to determine whether we can be satisfied that there is no likely substantial lessening of competition in any market as a result of the Proposed Acquisition.

JPT's views

47. In the Application, JPT defines a market for the wholesale supply of fruit and vegetables in New Zealand, including domestically and overseas-grown produce.[30] JPT submits that:

    47.1 regarding the product dimension, there is a high degree of demand- and supply-side substitutability for the supply of fresh produce, such that the product dimension of the market can span all fruit and vegetables. However, JPT observes that even if narrower markets are defined for categories of produce, competitive concerns do not arise;[31]

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28 Horticulture New Zealand, "HortNZ marks 20 years supporting one of New Zealand's fastest-growing sectors". See https://www.hortnz.co.nz/news-events-and-media/media-releases/hortnz-marks-20-years-supporting-one-of-new-zealands-fastest-growing-sectors.

29 Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81] and Mergers and Acquisitions Guidelines above n5 at [3.7]-[3.10].

30 The Application at [65].

31 The Application at [66]-[67], observing that 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, as evidenced by a significant proportion of fresh produce wholesalers supplying a broad range of produce (rather than a single category).

47.2 in relation to the functional dimension, that the relevant market should include growers, wholesalers and customers, because when sourcing produce from growers, the Parties compete with other wholesalers, and increasingly customers who may acquire fresh produce direct from growers.[32] Similarly, JPT submits that the Parties compete with growers to supply fresh produce to customers;[33]

47.3 regarding the geographic dimension, there is a single national market for the wholesale supply of fresh produce that includes imported produce, in which the Parties sell their produce to customers throughout New Zealand and many customers can and do procure on a national basis;[34] and

47.4 regarding customer markets, it is appropriate to define a single market comprising all customers (whether consumers, retailers or other wholesalers), due to the highly fragmented supply chain for fresh produce, the frequency with which customers purchase produce via multiple channels, and the ability of end customers, growers and retailers to move up and down the supply chain and deal with one another.[35] JPT also submits that wholesalers would not have the incentive to price discriminate between its customers, including between RGRs and smaller retailers.[36]

Our preliminary view

48. To best identify the relevant markets to assess the impact of the Proposed Acquisition, our preliminary view is that it would be appropriate to consider the markets in which the Parties acquire fresh produce from growers separately from the markets in which the Parties supply fresh produce.[37]

49. Defining separate markets for the two functional levels at which the Parties compete is a simple and clear way to identify:

49.1 separately, the set of relevant substitutes available to:

49.1.1 growers in relation to the sale of their fresh produce; and

49.1.2 wholesale customers (who buy from the Parties); and

49.2 whether the competitive effects of the Proposed Acquisition may differ in terms of the acquisition versus wholesale supply of fresh produce.

50. Analysing each of these functions separately makes clear the relevant role and competitive dynamic of each interested party in each case. This is because in this industry, some of the Parties' customers (eg, supermarkets and niche distributors

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32 The Application at [69].
33 The Application at [70], pointing to the explosion in the number of farmers' markets around the country which has led to the increase in supply direct to end consumers.
34 The Application at [73].
35 The Application at [75]-[77] and [79]-[81].
36 The Application at [79]-[80].
37 Whether (on the acquire side) produce is purchased on trade terms or commission, and whether (on the sell side) it is sold through trading floors or 'remote' brokered arrangements.

servicing foodservice) may also be competing to some degree with the Parties to acquire fresh produce from growers and/or to supply fresh produce to wholesale customers. Analysing acquisition and supply markets also enables us to separately consider whether the competitive supply options (including 'full service' wholesalers, wholesale distributors, and direct supply) differ for growers in acquisition markets compared to the competitive acquisition options available to wholesale customers in supply markets.

51. At this stage, we have not reached any definitive views on the boundaries of the relevant product, geographic or customer markets for assessing the competitive effects of the Proposed Acquisition.

52. Defining the relevant markets in this case has some challenges, in that there is both:

    52.1 the sale and purchase of produce – on traded terms the goods pass from grower to wholesaler (and are on-sold by the wholesaler) and on consignment terms the goods pass from grower to wholesale customer (with the transaction brokered by the wholesaler as the grower's agent); and

    52.2 the provision of services – on consignment terms, the wholesaler charges the grower a commission for facilitating the transaction.

53. While for consignment terms there are some similarities with a platform business, our current view is that the better way of analysing the competitive effects of the Proposed Acquisition is to focus on the supply and purchase of fresh produce. As we note below, T&G Fresh trades on both bases, and our preliminary view is that these different bases are substitutable for each other.[38] [39]

54. However, our current preliminary view is that, for acquisition markets:

    54.1 on the **product dimension**, we are inclined to the view that it would be most appropriate to assess the impact of the Proposed Acquisition on separate product markets for individual fruits or vegetables (or types of produce, such as citrus, bananas, apples and pears, cherries, other stone fruit, berry fruits, kiwifruit, leaf and stem vegetables, brassica, root crops, onions and bulbs, mushrooms, potatoes and other tuber vegetables, courgettes, and so on), based on differences in the perishability, storage timeframes and other factors that influence the supply options for growers;

    54.2 on the **geographic dimension**, we consider that at least some regional geographic markets may be appropriate, although this may vary by produce

[38] These features may give rise to challenges in the application of the hypothetical monopolist and hypothetical monopsonist tests, that we discuss below. As our Mergers and Acquisitions Guidelines acknowledge, the tests are tools and are sometimes less useful in defining, in particular, the supply chain dimension of the market. While often the tests cannot be quantitatively applied, they nevertheless provide a useful way of analysing the evidence and judging the extent of substitutability. See our Mergers and Acquisitions Guidelines above n5 at[3.24].

[39] While this distinction is relevant as between growers and wholesalers (and goes to the choice of trade terms, risk sharing and how the parties are remunerated), it is less relevant to wholesale customers who pay wholesale prices either way. The differences in business models does complicate aspects of our analysis.

or category (due to perishability or other factors), and we are continuing to consider whether there are any areas and produce types within New Zealand for which more narrow markets may be most appropriate, and similarly whether there are areas and produce types for which broader geographic markets should be defined; and

54.3 on the **supplier/grower dimension**, we are continuing to consider whether it may be appropriate to define markets by reference to characteristics of grower, such as grower size.[40]

55. For the supply of fresh produce to wholesale customers, our preliminary view on market definition is that:

55.1 on the **product dimension**, we consider that a single product market including all produce types may be appropriate.

55.2 on the **functional dimension**, we are continuing to consider whether this should be limited to supply by 'full service' wholesalers (ie, excluding wholesale distributors and direct supply), due to the nature of the functions and services offered by these wholesalers compared to that of other wholesale suppliers; and

55.3 on the **geographic dimension**, we consider that regional markets may be appropriate, although we expect that these may be non-uniform in size around New Zealand based on the characteristics and options available for supply to wholesale customers in different locations. We are continuing to consider whether, alternatively, national markets may be most appropriate.

56. We describe our framework and preliminary view for each of the acquisition-side and supply-side functional dimensions in turn, below.

Acquisition markets

Framework for defining acquisition markets

57. The conceptual framework for defining relevant markets in mergers between competing buyers is a variation of the hypothetical monopolist test. In this case, we define relevant fresh produce acquisition markets by asking whether a hypothetical sole buyer of wholesale produce from growers could profitably impose a small but significant non-transitory decrease in price (SSNDP).[41]

Product dimension

58. We consider substitution from the perspective of both growers and buyers by assessing:

[40] This would be conceptually equivalent to defining relevant customer dimensions in a seller market as set out in our Mergers and Acquisition Guidelines above n5 at [3.41].

[41] In this context, that may be able to be achieved through reduction in the price of trade purchases or an increase in commission for consignment sales. The economic effect is the same.

58.1 whether growers of fresh produce would respond to an SSNDP by reducing volumes sold to the hypothetical sole buyer (eg, by switching to using other channels to market); and

58.2 whether buyers that were not originally purchasing the produce type, having observed a decrease in price, could easily, profitably and quickly switch to begin purchasing the fruit or vegetable(s) in question (offering growers a new option).

59. Growers generally cannot switch easily and quickly across produce types or categories in response to changes in relative prices, as planting takes place long in advance of harvesting, so they cannot be easily scaled up or down outside of the planting cycle (although the length of that cycle will vary by produce type).[42] The available alternative routes to market for produce may also vary by produce type. For example, produce that are readily exported (such as kiwifruit, avocadoes, cherries) have niche wholesalers specialising in their acquisition and export, which provide an alternative route to market, while other perishable crops may generally not be exported.

60. On the demand side, we expect the extent to which wholesalers other than the Parties may easily, profitably and quickly switch to begin purchasing the fruit or vegetable(s) in question may be higher, because the inputs to wholesaling are very similar across different crops. Wholesaling of fresh produce is associated with large investments in cool storage and distribution assets,[43] and also requires simultaneously building relationships with growers and customers to be able to move perishable produce quickly to maximise its value to each group.[44]

61. We also note that 'full service' wholesalers generally procure with an aim to offer a sufficiently comprehensive range of fruits and vegetables in order to compete in wholesale produce markets and serve their customers, which may constrain them from making drastic changes to their product mix.[45]

Geographic dimension

62. We understand that for perishable produce, suppliers and buyers have a preference for local or regional transactions. This is reflected in the presence and prevalence of:

62.1 regional physical wholesale markets run by the Parties; and

62.2 regional produce sourcing by some wholesale customers (such as the distribution centres of RGRs).

63. The size of geographic areas across which growers can and do supply produce may vary by produce category, based on factors including the availability of supply in

[42] See ACCC, Perishable Agricultural Goods Inquiry, Final Report (November 2020) at 4.
[43] Submission from Anonymous D (21 July 2026) at [41].
[44] See ACCC, Perishable Agricultural Goods Inquiry above n42 at 39 for a discussion on the consequences of perishability in production of fruit and vegetables, such as necessitating timely access to market.
[45] [ ] Commerce Commission interview with [ ].

other regions, extent of perishability, the location of buyers around New Zealand (and in the case of exportable produce, abroad), and the cost of freight.

64. In addition, the cost of freight can be relatively high compared to the cost of produce, particularly for travel that includes crossing the Cook Strait. However, some produce may be primarily grown in one region and consumed in another. For example, stone fruit is primarily grown in Central Otago but a large proportion of this fruit is destined for export markets or city centres around the country.

65. As such, we consider that there is not likely to be a one-sized estimation of the approximate size of geographic markets that would apply to all fresh produce markets. The size of these markets will depend on factors including:

    65.1 degree of perishability;

    65.2 need for cool storage;

    65.3 ability to export and location of export markets; and

    65.4 size and location of growers relative to the location and nature of demand for the produce.

66. For these reasons, it may be appropriate to define local or regional markets for some produce categories, and national markets (or perhaps broader) for some exportable produce categorise.

Grower dimension

67. More generally, the Parties acquire fresh produce from hundreds of growers. These range from large growers that also sell to export markets to small local growers that supply seasonal produce in a local region.

68. For some growers, the range of potential options might include:

    68.1 niche wholesalers such as Seeka and Primor Produce;

    68.2 export markets;

    68.3 retailers, including RGRs, smaller retailers and green grocers;

    68.4 foodservice distributors such as Bidfood; and

    68.5 farmers markets and farmgate sales, although our preliminary view is that these are not a close substitute to supplying wholesalers for commercial growers.[46]

69. However, emerging evidence from our investigation to date suggests that the range of potential options available to growers might differ by produce type, size of grower, region, or other factors. For some smaller growers, growers with irregular,

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[46] Submissions from Anonymous A (20 July 2026) at section 2 and Anonymous F (26 July 2026) at section 8.

seasonal output or those seeking to place variable grades of produce, we have heard that many of the above listed options may not be close alternatives. For example:

69.1 Anonymous A submits that supermarkets seek out large wholesalers or "massive" growers who can supply multiple product lines simultaneously, and as such supermarkets are not a viable option for small-to-medium sized growers;[47]

69.2 Anonymous D submits that the central wholesale markets offer a service distinct from that offered by alternative channels, because it is a centralised channel to place variable volumes and grades, aggregate demand, provide local market knowledge and price discovery, coordinate transport, manage credit and collection, and find buyers for seasonal surpluses or produce that does not fit a major retailer's programme. Anonymous D notes that these functions are especially important where harvest timing is fixed and the product has a short saleable life;[48] and

69.3 some stakeholders submit that growers with continuous, standardised volumes may be better placed to contract directly with supermarkets, while growers with irregular or seasonal output may have materially fewer options.[49]

70. As such, there are growers that are likely to be reliant on wholesale market channels (such as the Parties and MG Marketing). We are considering whether the range of suitable alternative options differs on the basis of produce type, seasonality, grower size, or any other relevant dimension, and as such we are considering whether it would be appropriate to define separate markets on the basis of produce type, grower size, seasonality, region (discussed further below), or any other relevant factor.

71. We are also continuing to consider whether it may be appropriate to define a narrow market for the acquisition of specific produce from those growers that do not have the option to bypass the wholesale market operators and supply wholesale customers directly.[50]

71.1 This is conceptually analogous to considering separate customer markets where relevant.[51]

71.2 Our investigation to date suggests that [ ],[52] and

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[47] Submission from Anonymous A (20 July 2026) at section 2.
[48] Submission from Anonymous D (21 July 2026) at [9].
[49] Submissions from Anonymous D (21 July 2026) at [16] and J Kim (21 July 2026) at 2.
[50] See Jerry Hausman, Gregory Leonard and Christopher Vellturo, Market Definition under Price Discrimination, Antitrust Law Journal, Vol 64, 1996 at 369.
[51] As set our in our Mergers and Acquisitions Guidelines above n5 at [3.40], we may examine the customer dimension of a market where suppliers are able to price discriminate between customers because their competitive alternatives vary.
[52] Commerce Commission interview with [ ].

[ ].[53]

72. We are continuing to investigate whether there are produce categories or types of grower for which the effects of the Proposed Acquisition are likely to be heightened or lessened, such that they are meaningful to assess in our analysis.

Supply of fresh produce to wholesale customers

Framework for defining seller markets

73. The standard approach that we use to assess the boundaries of selling markets is to identify those products and geographic locations which are close substitutes to those supplied by the Parties. The conceptual framework we use to identify these substitutes in a merger is the hypothetical monopolist test. We ask whether a hypothetical monopolist could profitably impost a small, but significant, non-transitory increase in price (a SSNIP) of at least one of the merged firm's products. This will be the case where there are few good substitutes for the wholesalers' services in question.[54] We consider substitution on both the demand and the supply side, that is:[55]

   73.1 on the demand side, whether customers would switch sufficient purchase to alternative products or routes for supply (demand-side substitution); and

   73.2 on the supply side, whether other firms would easily, profitably and quickly (generally within one year) switch production to the products or locations in question without significant cost (supply-side substitution).

Functional level

74. Market feedback to date suggests that the 'full service' wholesale markets operated by the Parties and MG perform a distinct function from a wholesale distributor, because it aggregates demand, bringing together a range of volumes and grades of produce, provides local market knowledge and price discovery, co-ordinates transport, and finds buyers for seasonal surpluses or produce that does not fit a major retailer's programme.[56]

75. Some large wholesale customers have strong bargaining power and the ability to seek direct supply from large growers, which may constrain a hypothetical monopolist from imposing a SSNIP.[57] Nevertheless, we are considering whether there may be limited demand-side substitution in response to a SSNIP by a hypothetical monopolist, due to the distinct function that the 'full service' wholesalers provide in the supply chain for customers.

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53 [ ]

54 Mergers and Acquisitions Guidelines above n5 at [3.17]-[3.18].

55 Mergers and Acquisitions Guidelines above n5 at [3.16].

56 Submission from Anonymous D (21 July 2026) at [9].

57 For example, [ ] and [ ] are able to seek direct supply from large growers. Commerce Commission interviews with [ ] and [ ].

Product market

76. The three ‘full service’ wholesalers (ie, the Parties and MG) have the facilities, infrastructure and machinery used for storing, processing, transporting and selling virtually all fresh produce types.[58] As such, a hypothetical monopolist in the wholesale supply of a single produce category (like tomatoes) would not be able to profitably impose a SSNIP, due to supply-side substitution by large wholesalers of a wide range of other produce types (excluding tomatoes, in our example), which as outlined above have the existing facilities, infrastructure and machinery to do so. Our preliminary view is therefore that there is a single product market for the wholesale supply of all fruits and vegetables in New Zealand.

77. As mentioned above, we are continuing to consider whether the nature of the wholesale function offered should be limited to ‘full service’ wholesalers – ie, those that offer a full-range physical and online wholesale marketplace, with the ability to make daily one-off ‘spot purchases’ across a wide range of produce categories, like those offered by the Parties and MG. As noted in the industry background section above, there are other wholesalers who specialise in a much smaller range of produce and take on more of a distributor’s role, as a dedicated sales partner who actively promotes their select product range. They also offer more structured and contractual supply programmes.

78. These different wholesale models serve different wholesale customer needs. Smaller independent wholesale customers often may not have their own chilled storage; they may rely on these ’full service’ wholesale marketplaces to purchase produce frequently, on a casual basis, in small amounts, covering most produce types they need in a one-stop-shop.[59] Larger wholesale customers who have some chilled storage may elect to buy some of their produce through structured supply programmes, and use the wholesale marketplaces for top-up purchases only.[60]

Geographic market

79. For the same reasons outlined in relation to the geographic dimension of acquisition markets, we currently consider it is appropriate to assess the impact of the Proposed Acquisition on regional wholesale produce markets, having regard to:

    79.1 buyers and suppliers’ preferences to transact locally (or as locally as possible) due to the perishable nature of produce;

    79.2 the presence of the Parties’ regional physical markets in Auckland, Christchurch, Palmerston North, Wellington, Tauranga;

    79.3 the prevalence of regional produce sourcing by some customers (such as the distribution centres of RGRs); and

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58 The Application at [66b] states that the facilities, infrastructure and machinery used for storing, processing, transporting, and selling fresh produce is virtually identical across all types of produce, as evidenced by wholesalers supplying a broad range of produce (rather than a single category).

59 Commerce Commission interview with [ ].

60 See, for example, Commerce Commission interview with [ ].

79.4 the cost of freight being relatively high compared to the cost of produce.

80. For the purposes of our assessment of the Proposed Acquisition, we do not currently consider it necessary to define exact geographic boundaries of competition. We note that the size of local markets is likely to vary by produce type and location (ie, it will not be uniform across New Zealand or across produce types). In our competition assessment we are considering both whether there are any competition effects locally and on broader geographic dimensions.

Further information we are seeking

81. We invite submissions on our approach to market definition and for the Parties and interested parties to provide us with further evidence on the scope of wholesale fresh produce markets, including:

81.1 In relation to acquisition markets:

81.1.1 any common features (such as grower size, region, produce type, degree of perishability or seasonality, the quality or grade of produce) that might affect the nature and number of credible alternative buyers and routes to market for growers' fresh produce;

81.1.2 the proportion of New Zealand fresh produce growers that currently can or do sell direct to large wholesale customers (such as supermarkets, other retailers, food service customers), including by revenue or share of supply;

81.1.3 the proportion of New Zealand fresh produce growers for whom selling direct is not a feasible option;

81.1.4 the role of freight and other transport costs in setting the geographic parameters for supply and demand, including any industry rules of thumb by which growers and buyers make decisions on where and who to transact with;

81.1.5 examples of growers that sell to buyers outside of their region(s) of supply (or, equivalently, buyers that seek supply from growers outside of the region that they plan to sell the produce from), and why they do this (eg, we are aware that cherries are largely grown in Central Otago, with some also grown in the Hawke's Bay. Wholesale buyers outside of these regions will likely seek supply from growers in these regions. We are interested in other such examples);

81.1.6 the extent to which the ability to export fresh produce should be considered in our approach to defining markets; and

81.1.7 the extent to which wholesale distributors that do not run physical (or online) markets (such as Seeka, Primor Produce, Bidfood and other similar firms) compete with the Parties to acquire fresh produce across the full range of growers that the Parties would typically engage with, or would have the ability to expand to do so in the event of a SSNDP.

81.2 In relation to supply markets to wholesale customers:

81.2.1 the extent to which competition may occur at a national level (as distinct from local or regional competition);

81.2.2 the extent to which wholesalers that do not run physical (or online) markets for the sale of fresh produce compete with the Parties;

81.2.3 the extent to which other market participants could easily, quickly and profitably change business models to provide a wholesale service;

81.2.4 the extent to which product range is an important feature of competition; and

81.2.5 the role of 'full service' wholesalers in regional markets, where no physical markets are present.

With and without scenarios

82. Assessing whether a substantial lessening of competition is likely requires us to:

82.1 compare the likely state of competition if the Proposed Acquisition proceeds (the scenario with the acquisition, often referred to as the factual) with the likely state of competition if it does not (the scenario without the acquisition, often referred to as the counterfactual); and

82.2 determine whether competition is likely to be substantially lessened by comparing those scenarios.

With the Proposed Acquisition

83. With the Proposed Acquisition, JPT (or any interconnected body) would acquire 100% of the shares in T&G Fresh.

84. In this factual scenario, JPT submits that it intends to:[61]

84.1 [ ];

84.2 [ ]; and

84.3 [ ].

[61] The Application at [ ] and [ ].

Without the Proposed Acquisition

85. For the purposes of this SoI, we have assessed the Proposed Acquisition against a counterfactual of the status quo, where T&G Fresh would remain an independent competitor to Fresh Direct in the relevant markets.

86. JPT submits that without the acquisition, [ ].[62]

87. T&G Fresh submits that [ ].[63]

Unilateral effects – overview

88. 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 reduce quality or service or profitably increase price above the level that would prevail without the merger,[64] without the profitability of that price increase or reduction in quality or service being thwarted by rival firms' competitive responses.[65]

89. In the following sections we undertake a preliminary assessment of whether unilateral effects are likely to arise from the Proposed Acquisition in the relevant markets for the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers by considering:

    89.1 the closeness of competition between the Parties; and

    89.2 the likely constraint that the merged entity would face following the Proposed Acquisition. This includes discussions on:

        89.2.1 the degree of constraint that existing competition would impose on the merged entity;

        89.2.2 how easily rivals could enter and/or expand;

        89.2.3 the countervailing power of growers in the relevant markets;

        89.2.4 the countervailing power of wholesale customers in the relevant markets, and the extent to which this is dependent on the ability of growers to supply directly; and

        89.2.5 the perishable nature of fresh produce.

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62 The Application at [82].

63 The Application at [83].

64 Or, in acquisition markets, profitably decrease the price below or increase commission rates above the level that would prevail without the merger.

65 Mergers and Acquisition Guidelines above n5 at [3.62].

Summary of JPT's views

90. In the Application, JPT submits that the Proposed Acquisition would not be likely to substantially lessen competition, in a single, national market for the wholesale supply of fresh produce in New Zealand, due to unilateral effects because:

90.1 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;[66]

90.2 the merged entity would have a modest combined share, with a small increment resulting from the Proposed Acquisition;[67]

90.3 the Parties are not each other's closest competitors and have different business models;[68]

90.4 the merged entity would be constrained by a range of competitors (including MG, wholesale distributors, and other players), several of which are very well-resourced and have a national presence;[69]

90.5 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;[70] and

90.6 the merged entity would face significant countervailing power from retailers and growers who have been increasingly bypassing wholesalers and 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).[71]

91. In the Application, JPT does not address acquisition markets separately from wholesale supply of produce. Because of this, JPT does not touch explicitly on the potential for unilateral effects in acquisition markets specifically.

Summary of our preliminary view

92. We continue to assess whether the Proposed Acquisition is likely to result in a substantial lessening of competition due to unilateral effects in:

92.1 the relevant markets for the acquisition of fresh produce from growers such that the merged entity, as an acquirer of fresh produce, could reduce prices/increase commission rates or offer worse terms or reduced services to growers; and

66 The Application at [86].
67 The Application at [89]-[92].
68 The Application at [93].
69 The Application at [94]-[98] and Attachment A.
70 The Application at [99]-[100].
71 The Application at [101]-[109].

92.2 the relevant markets for the supply of fresh produce to wholesale customers such that the merged entity, as a supplier of fresh produce, could increase prices or reduce non-price factors, such as quality or service, to wholesale customers.

93. While we are continuing to assess unilateral effects in all of the relevant markets, we note that at this stage, the focus of our assessment on unilateral effects is likely to be in the relevant markets for the acquisition of fresh produce. This is because:

93.1 the majority of concerns raised with us to date have been regarding the potential effects of the Proposed Acquisition on the acquisition of produce from growers. The majority of wholesale customers that we have spoken with have not raised concerns regarding the Proposed Acquisition;[72] and

93.2 in our view, the dynamics of the industry may mean that growers are more vulnerable to any exercise of market power by the merged entity than wholesale customers, because:

93.2.1 wholesale customers likely have better access to information on retail/end prices than growers, such that they have a good sense for supply/demand and pricing dynamism in the market, and they may have a stronger ability to negotiate by threatening to exercise alternative options if a wholesaler's prices are 'out of market';

93.2.2 wholesale customers may be more able to pass on any price increases to their end customers (so long as it does not impact their ability to offer a competitive price relative to their competitors); and

93.2.3 growers, on the other hand, may have less ability to resist any reductions in price or worsening of terms from wholesalers, and may have less visibility over retail/end prices.

94. Growers have raised concerns regarding the Proposed Acquisition being a potential three to two merger of the 'full service' wholesalers, and the potential for reductions in price/increases in commission rates and worsening of terms as a result of the Proposed Acquisition.[73] Further, growers have raised concerns regarding the extent of the constraint on the merged entity by alternative options for supplying their produce (eg, in terms of other wholesalers and/or direct supply as alternative routes to market).[74] We note, however, that we have also heard from growers via the survey who are not concerned about the Proposed Acquisition.

95. Our investigation to date suggests that T&G Fresh's sales software platform offers more transparency and information to growers regarding their produce, translating to a higher quality service for growers. Some growers indicated a strong preference

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72 We note, however, that one wholesale customer did raise concerns about prices being raised post-Acquisition. Commerce Commission interview with [ ].

73 Submissions from Anonymous A (20 July 2026), Anonymous D (21 July 2026) and Anonymous G (5 August 2026).

74 Submissions from Anonymous D (21 July 2026), Anonymous F (30 July 2026), Anonymous G (5 August 2026) and J Kim (21 July 2026).

for T&G Fresh's sales software platform (over Fresh Direct's) and indicated that they would prefer that the merged entity use T&G Fresh's software platform to ensure transparency for growers.[75]

96. At this stage, the evidence we have gathered shows that the Parties are likely competing closely for at least some growers and wholesale customers. We also consider that the remaining existing competitive constraints from 'full service' wholesaler, MG, and from wholesale distributors and direct supply, may not be sufficient to constrain the merged entity in all relevant markets. We are continuing to consider, and discuss further below, whether the extent of these constraints varies by produce category, location, grower type/size, customer type/size, and other factors.

97. Below, we discuss our approach for assessing unilateral effects in acquisition markets, followed by our preliminary findings thus far and questions we are continuing to consider in both acquisition and supply markets regarding closeness of competition, constraint from existing wholesalers, barriers to entry/expansion, and countervailing power from growers and wholesale customers.

Approach to assessing unilateral effects in acquisition markets

Choice of economic model

98. For analytical purposes, there are two frameworks for assessing buyer side power: a monopsony framework, and a bargaining framework. At this stage, we consider that for most relevant markets, it is likely to be appropriate to analyse the effects of the Proposed Acquisition using a bargaining framework rather than a monopsony framework.

99. A bargaining framework is appropriate where buyers negotiate bilaterally with individual suppliers. Under the bargaining framework, buyers and sellers negotiate to share the overall gains from trade. The resulting price will fall within the bounds of the minimum price that the seller is willing to accept, and the maximum price the buyer is willing to pay.

100. In our view, a bargaining model is more closely aligned with the economic reality for growers and wholesalers because we have heard that for many growers, there is some scope for negotiation; and on occasion, the wholesalers offer different prices to growers.

101. Regardless of the economic model applied, our focus is on considering whether a loss of competitive tension and rivalry between the Parties with the Proposed Acquisition is likely to result in a substantial lessening of competition.

Produce types/categories that may receive more focus

102. To make our assessment tractable, we currently propose to undertake a small number of more detailed, focused competition assessments in respect of specific candidate markets in which we anticipate competition concerns may be more likely to arise. These detailed assessments into specific categories would complement our

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[75] Submissions from Anonymous C (20 July 2026) and Anonymous E (26 July 2026).

overall assessment, providing specific illustrative examples of the likely effect of the Proposed Acquisition on competition.

103. We are still considering the most appropriate basis for selecting the candidate markets that will be the subject of these more detailed assessments. The factors that we may have regard to include:

103.1 extent of perishability of the produce;

103.2 ability to export (because this presents another route to market for the grower);

103.3 the extent and nature of any concerns raised by growers in a given produce category and/or region; and

103.4 the extent of vertical integration by the Parties and MG in particular produce categories.

104. We welcome submissions on the appropriate economic model to apply, our proposed approach of giving more detailed focus to specific markets as part of our assessment, and the best approach for selecting any such markets.

Closeness of competition between the Parties

105. The evidence we have gathered to date indicates that the Parties are likely to impose competitive constraint on one another, but the extent of this competitive constraint may vary by produce category, location, grower size or type, or wholesale customer size or type.

106. As outlined above, the Parties are two of the three 'full service' wholesalers operating nationally in New Zealand, along with MG. Industry participants have described these three wholesalers as being quite similar in terms of what they offer and noted that each has particular strengths.[76]

107. Below we consider separately the closeness of competition between the Parties in the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers.

Closeness of competition in the acquisition of fresh produce from growers

108. The evidence gathered to date suggests that the Parties compete closely in acquisition markets, although the extent of this competitive constraint may vary by produce category, location, and/or grower.

109. For example, there is a material degree of 'multi-homing' by growers between the Parties (ie, growers selling produce to both Parties), suggesting a closeness of competition for the acquisition of fresh produce. Our preliminary analysis suggests that around [ ] of T&G Fresh growers also currently sell produce to Fresh Direct,

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76 See, for example, Commerce Commission interviews with [ ], [ ] and [ ].

and similarly, that around [ ] of Fresh Direct growers also sell produce to T&G Fresh.[77] This suggests that for (at least) these growers, the Parties are likely to compete closely to acquire produce.

110. Further, one grower indicated that it frequently plays the Parties off against each other in negotiations.[78] Another grower indicated that where the Parties currently compete for crop they are incentivised to offer a better net return or better services to win or retain supply.[79]

111. As mentioned above, we also note that there have historically been some differences between how the Parties interact with growers. In particular:

111.1 Fresh Direct has to date largely traded with growers on what the industry refers to as a 'traded model', which means that they buy produce as principal, outright and on-sell it to wholesale customers. This is distinct from selling as agent on growers' behalf and charging commission (what the industry refers to as a 'consignment model'). However, we note that [ ].[80]

111.2 T&G Fresh engages with growers via a combination of both the consignment and traded models, [ ]. The service of selling as agent on growers' behalf is substitutable for the purchase and on-sale of goods, although for growers the remuneration structures are different.[81]

112. We consider that the Parties are likely to be competing closely for the acquisition of fresh produce from at least some growers, but we are continuing to consider the extent to which this may vary by produce category/type, location, grower size, or other factors. We invite submissions on:

112.1 the nature and intensity of the competition between the Parties for the acquisition of fresh produce;

112.2 the extent to which the Parties actively seek to win volumes from growers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them);

112.3 the extent to which the competition between the Parties may vary by produce category/type, location, grower size, or other factors;

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77 [ ].

78 Commerce Commission interview with [ ].

79 Submission from Anonymous D (21 July 2026) at [19].

80 [ ] Commerce Commission interview with [ ].

81 This makes no difference, however, for wholesale customers who pay wholesale prices either way.

112.4 the importance of the models through which the Parties interact with growers (ie, traded or consignment) and the relative merits and limits of each so far as growers are concerned; and

112.5 the extent to which competition between the Parties would be lost with the Proposed Acquisition.

Closeness of competition in the supply of fresh produce to wholesale customers

113. Like in the acquisition markets, the evidence gathered to date indicates that the Parties are likely to impose competitive constraint on one another for the supply of fresh produce to wholesale customers, although we are still considering the extent to which this constraint may vary by produce category, location, and/or wholesale customer. For example:

113.1 some customers have indicated that they can and, to varying degrees, do play the Parties (as well as MG) off against each other in negotiations;[82] and

113.2 some wholesale customers have indicated that Fresh Direct is less strong in certain regions.[83] This could suggest that the Parties compete less closely in those regions.

114. We welcome submissions on:

114.1 the nature and intensity of the competition between the Parties for the supply of fresh produce to wholesale customers;

114.2 the extent to which the Parties actively seek to win business from wholesale customers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of wholesale customers switching between them);

114.3 the extent to which the competition between the Parties may vary by produce category/type, location, customer size or type, or other factors;

114.4 the extent to which competition would be lost with the Proposed Acquisition; and

114.5 the extent of any dynamic constraints that would likely be faced by the merged entity, such as the incentive to maintain a broad customer base and to limit the longer-term trend of customers moving to direct relationships with growers, and whether this is likely to constrain the merged entity from increasing wholesale prices.

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82 Commerce Commission interviews with [ ] and [ ].

83 For example, wholesale customers indicated that Fresh Direct is less strong in [ ]. Commerce Commission interviews with [ ] and [ ].

Constraint from existing competition

115. We are currently not satisfied the constraint from other wholesalers would be sufficient to constrain the merged entity in all relevant markets. While there may be greater constraint for growers and/or wholesale customers in some produce categories and geographies, our preliminary view is that this may not be the case across all produce categories or geographic regions.

116. Other than the Parties, there is one other major 'full service' wholesaler (MG). In the Application, [ ].[84] As noted above, other wholesalers appear to be distinct from the Parties and MG because they do not offer physical wholesale markets and are not 'full service' wholesalers of a wide range of fresh produce; instead, they may specialise in particular produce types or regions.[85]

117. We discuss our preliminary views regarding the constraint from MG and other wholesale distributors in the relevant markets for the acquisition of produce from growers and the supply to wholesale customers below.

Constraint from MG

Constraint from MG in the acquisition of fresh produce from growers

118. As the largest supplier operating wholesale fresh produce markets in New Zealand, the evidence to date suggests that MG has strong relationships with a large number of growers. Our preliminary view is that MG may therefore offer a strong alternative to the merged entity with the Proposed Acquisition for (at least) these growers. However, we are considering whether the constraint imposed by MG may vary across growers, produce categories, or locations.

119. MG operates as a cooperative, with some growers being shareholders.[86] As such, MG is vertically integrated into growing certain produce types.[87] These features may have important implications for the extent to which MG competes with the Parties for the acquisition of fresh produce, in particular its incentives to acquire produce from:

    119.1 independent (non-shareholder) growers; and

    119.2 growers of produce types for which MG is vertically integrated (eg, tomatoes).

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84 The Application at [ ].

85 The Application at [96] and Commerce Commission interviews with [ ], [ ] and [ ].

86 MG advertises a series of benefits such as dividends and rebates for growers, who become shareholders. See https://www.mggroup.co.nz/about-mg/shareholders/.

87 MG's subsidiaries are set out at MG Group Annual Report for the year ended 30 June 2025 at p 44 see https://www.mggroup.co.nz/assets/2025-AGM-and-Financials/9d9c456c56/2025-MG-Full-Annual-Report-web.pdf, and include Southern Paprika (which grows tomatoes and capsicum) see https://spl.nz/, JS Ewers (a range of produce including tomatoes, capsicum, eggplant, greens and melons) see https://jsewers.co.nz , Kaipaki Berries (strawberries, raspberries, blackberries) https://kaipakiberries.co.nz/, New Zealand Fruit Free Company (which grows apples, apricots, nectarines, peaches, cherries, plums, citrus, root stock), see https://nzftc.co.nz/.

120. At least one independent grower so far has indicated a preference to not deal with MG given its cooperative and vertically integrated model and concerns of possible preferential treatment towards its members.[88]

121. [ ]:[89]

121.1 [ ]; and

121.2 [ ].

122. We have received feedback through the survey from various growers that do supply MG as well as at least one of the Parties. However, it is currently unclear whether these respondents are independent or MG shareholders, and the extent to which they could increase their supply to MG post-acquisition.

123. We are continuing to consider, and welcome submissions on, the extent to which MG presents a constraint on the merged entity and whether this varies and may be less for some growers than others (eg, for non-shareholder growers and/or growers of produce types for which MG is already vertically integrated). In particular, we invite submissions on the following questions:

123.1 the nature and intensity of competition between the Parties and MG for the acquisition of fresh produce;

123.2 the extent to which the Parties and MG actively seek to win volumes from growers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them);

123.3 the extent to which growers can reallocate their volumes between the Parties and MG;

123.4 the extent to which independent growers (ie, non-shareholders) can and do supply MG;

123.5 the extent to which MG's co-operative structure and vertical integration in specific produce categories may affect its incentives to transact, and the ways in which it transacts, with non-shareholder growers in these categories; and

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88 Commerce Commission interview with [ ].

89 Commerce Commission interview with [ ].

123.6 the extent to which the competition between the Parties and MG may vary by produce category/type, location, grower size, or other factors.

Constraint from MG in the supply of fresh produce to wholesale customers

124. With respect to the supply of fresh produce to wholesale customers, industry participants have consistently described MG as being a strong player, particularly in the South Island and in certain categories (eg, bananas).[90] MG is also the country's leading fresh produce importer.[91]

125. These factors indicate that MG is likely to be a competitive constraint on the merged entity for the supply of fresh produce to wholesale customers. This is further supported by feedback from some wholesale customers that have indicated that they can and, to varying degrees, do play MG and the Parties against each other in negotiations.[92]

126. We have, however, also received some feedback to suggest that the extent of the constraint by MG may vary by location. In particular, one wholesale customer indicated that of the 'full service' wholesalers, it prefers to use the Parties because MG's facilities are further away and less convenient to access.[93]

127. We are continuing to consider, and welcome submissions, on the extent to which the constraint from MG on the merged entity would vary by location, customer size, or other factors.

Constraint from other wholesalers

128. We are currently not satisfied that constraint from other wholesalers would be sufficient to constrain the merged entity in all relevant markets. While other wholesalers may provide greater constraint (and even sufficient constraint) for some growers and/or customers, or for certain produce categories or locations, our preliminary view is that this may not be the case across all categories, locations, and growers and/or customer size/types.

129. The evidence gathered to date suggests that:

129.1 as mentioned above, wholesale distributors tend to specialise in certain categories and do not offer a full range of produce in the way that MG and the Parties do. [ ] indicated that to sell to smaller wholesale customers, a wholesaler would typically need a wide range of products and offer a 'full service' offering. Meanwhile, serving only a part of a big customer's business allows wholesalers to specialise and offer a more reduced range.[94] Therefore, while wholesale distributors may constrain the

90 See, for example, Commerce Commission interviews with [ ], [ ] and [ ].

91 Market Gardeners Limited, Annual Report for the year ended 30 June 2025 at 15, see https://www.mggroup.co.nz/assets/2025-AGM-and-Financials/9d9c456c56/2025-MG-Full-Annual-Report-web.pdf

92 Commerce Commission interviews with [ ], [ ] and [ ].

93 Commerce Commission interview with [ ].

94 Commerce Commission interview with [ ].

merged entity in the categories in which they specialise, they may not constrain the merged entity across its full product range offering;

129.2 wholesale distributors may have specific preferences for dealing with certain customers, rather than offering a broad range of products to all wholesale customers;[95]

129.3 while some wholesale distributors can and do supply across the country, we have heard that [ ] they are less likely to constrain the merged entity outside of the Auckland area;[96]

129.4 some of the players listed by JPT in the Application do not appear likely to be viable alternatives to the merged entity due to their smaller scale and location (eg, focused in the Auckland region only), and most growers and wholesale customers we received feedback from have not identified these players as alternative options to the Parties;[97] and

129.5 some players may only be alternatives for either growers or customers, but not both (eg, if they supply a different customer base from the Parties).[98]

130. We also note that some growers have raised concerns regarding the extent of the constraint on the merged entity by alternative wholesalers, with some wholesale distributors not being an option particularly for smaller growers or growers in particular categories.[99]

131. We welcome submissions on the extent of the constraint from the range of other wholesalers identified by the Parties on the merged entity in:

131.1 the acquisition of fresh produce and the extent to which this may vary by produce category, location, or other factors; and

131.2 the supply of fresh produce to wholesale customers and the extent to which this may vary by produce category, location, or other factors.

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95 For example, [ ]. Commerce Commission interview with [ ].

96 For example, [ ]. Commerce Commission interviews with [ ] and [ ], and submission from Anonymous G (5 August 2026).

97 [ ]

98 For example, [ ].

99 Commerce Commission interview with [ ], and submissions from Anonymous D (21 July 2026), Anonymous G (5 August 2026) and Anonymous F (30 July 2026).

Barriers to entry/expansion

132. We assess whether expansion by existing competitors or entry by new competitors is likely to be sufficient in extent and occur in a timely fashion to constrain the merged firm and prevent a substantial lessening of competition. This is referred to as the 'LET' test.[100]

133. We are not currently satisfied that expansion by existing wholesalers or entry by new competitors would be likely, sufficient and timely to prevent an exercise of market power by the merged entity in the relevant markets for the acquisition of fresh produce from growers and the supply of fresh produce to wholesale customers.

134. We note that in the T&G/Freshmax determination, the Commission considered that the wholesale distributors were "likely to continue to organically grow their businesses in the future."[101] While at least some wholesale distributors have expanded since the T&G/Freshmax determination, our investigation to date suggests that this expansion has been in specific categories and regions, rather than across the full range that the Parties (and MG) offer across New Zealand.[102]

135. Further, evidence gathered to date indicates that there are significant barriers to expansion, which would also exist for new players trying to enter the market. For example:

    135.1 [ ] indicated that [ ]. It indicated that expanding its product range can be difficult and that in order to do this, it would need to have a grower of scale that can offer value, as well as a customer with corresponding requirements for that product. It indicated that [ ].[103]

    135.2 [ ] indicated that [ ] it noted that expanding in terms of product range can be difficult given pre-existing relationships between growers and wholesalers. It also indicated that in order to expand into a new category, it must have sufficient volumes to make a programme out of it. [ ].[104]

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100 Mergers and Acquisitions Guidelines above n5 at [3.95].

101 T&G Fresh/Freshmax above n25 at [59].

102 For example, [ ]. Commerce Commission interviews with [ ] and [ ], and the Application at [ ].

103 Commerce Commission interview with [ ].

104 Commerce Commission interview with [ ].

135.3 [ ] indicated that [ ]. It indicated that in order to expand, it must have sufficient customer demand for volume to justify costs (eg, for warehousing).[105]

136. We are continuing to consider and welcome submissions on:

136.1 any recent entry by new players;

136.2 any plans from wholesale distributors to expand further into wholesale supplying new categories or regions, or growing new produce types/categories upstream;

136.3 any barriers to entering or expanding into any particular categories or types of produce; and

136.4 any plans of wholesale distributors to expand into a similar model as the Parties and MG (ie, operating market floors with a 'full service' offering) and/or any barriers to doing so.

Countervailing power from growers and wholesale customers

137. A merged entity's ability to profitably decrease prices/increase commission rates to growers, increase prices to wholesale customers or otherwise reduce non-price factors may be constrained by certain growers' and wholesale customers' ability to exert substantial influence on negotiations. Countervailing power is more than the ability of growers or customers to switch from a merged entity to competing wholesalers, and the size and importance of a grower or customer is also not sufficient by itself to amount to countervailing power. Rather, countervailing power exists when a grower or customer possesses a special ability to substantially influence the price the merged entity charges or pays, such as by sponsoring entry or self-supplying.[106]

138. In this case, we consider that the most likely form of countervailing power by growers and wholesale customers would be their ability to bypass wholesalers and deal directly with each other independent of the wholesalers (ie, direct supply).

139. Based on the evidence gathered to date, we are not currently satisfied that growers and/or wholesale customers would have sufficient countervailing power to constrain the merged entity across all produce categories and regions.

140. While the evidence to date suggests that at least some growers and wholesale customers do have the option to deal directly with one another, the evidence also suggests that this may not be the case for all growers and wholesale customers. We are continuing to consider the extent to which direct supply is an option across produce categories, regions, grower size, and wholesale customer size.

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105 Commerce Commission interview with [ ].

106 Mergers and Acquisitions Guidelines above n5 at [3.113]-[3.115].

Direct supply as an alternative for growers

141. The evidence gathered to date suggests that while some growers may have the ability to supply wholesale customers directly, it may be a less viable alternative for other growers.

142. In particular, the evidence gathered to date suggests that direct supply may not be a viable alternative for:

142.1 smaller growers because:

142.1.1 where growers are responsible for transportation of produce to the wholesale customer, growers may need to supply significant volumes in order to make freight costs economical; and

142.1.2 smaller growers may face high barriers to supplying direct to the larger wholesale customers (eg, the supermarkets which represent a significant share of the wholesale customer base). In particular, our investigation to date suggests that requirements including in terms of volume, quality standards, packing, and compliance and food safety, make it more difficult for smaller growers to be able to supply supermarkets.[107] [ ];[108] and

142.2 growers located in more remote or non-metro areas because there are fewer wholesale customers nearby and therefore it may be less economical for growers to organise smaller volume deliveries or transact with customers located further away.[109]

143. More broadly, we have also heard that some growers may have a preference to supply via wholesalers rather than direct to wholesale customers:

143.1 to avoid disrupting their existing supply relationships with the wholesalers;[110] and

143.2 because it is simpler than managing accounts and deliveries with multiple wholesale customers or across multiple locations.[111]

[107] Submissions from J Kim (21 July 2026), Anonymous A (20 July 2026), Anonymous D (21 July 2026), and Anonymous F (30 July 2026).

[108] [ ]

[109] See, for example, Commerce Commission interviews with [ ] and [ ].

[110] Commerce Commission interview with [ ].

[111] Commerce Commission interview with [ ].

144. We invite submissions on the likely degree of countervailing power that growers would be likely to have. In particular, we welcome submissions on:

144.1 the extent to which growers can and do supply direct to wholesale customers, and the extent to which this may vary by produce category, grower size, and location;

144.2 specifically, the extent to which growers can and do supply direct to the supermarkets, and the extent to which this may vary by produce category, grower size, and location;

144.3 the extent to which growers would supply direct to wholesale customers (including supermarkets) in the future, if for example, the merged entity were to reduce prices/increase commission rates or offer worse terms or reduced services to growers;

144.4 the significance of packhouses in direct supply, and the extent to which this may vary by produce category, grower size, and location; and

144.5 how the costs may compare for growers in going direct versus via the wholesale channel.

Direct supply as an alternative for wholesale customers

145. The evidence gathered to date suggests that while some wholesale customers can and do source directly from growers and do not face barriers in doing so (ie, they have strong countervailing power),[112] others may face barriers or have a preference to source produce via the wholesalers directly.

146. In particular, we have heard that some wholesale customers may not have the option to source directly and/or may have limited options for direct supply due to location (eg, few growers nearby) or volume requirements (eg, either volume requirements are too large for growers to be able to supply or that volume requirements are too small to make it worthwhile for growers).[113]

147. We have also heard that some wholesale customers may prefer to go through wholesalers because:

147.1 it can be more convenient for a wholesale customer to travel to a local branch of a wholesaler who may also be located near a rival wholesaler, to see, compare, and collect produce;[114]

112 See, for example, Commerce Commission interviews with [ ] and [ ].

113 Commerce Commission interviews with [ ], [ ] and [ ].

114 Commerce Commission interviews with [ ] and [ ].

147.2 in the event that a wholesale customer receives a bad batch, it is easier to return the product and get a suitable replacement through a wholesaler;[115] and

147.3 a wholesale customer can avoid committing to a specific grower which can be problematic if, for example, that grower experiences a weather event that washes out its crops. Dealing instead with a wholesaler that has relationships with multiple growers can help to mitigate this risk.[116]

148. More broadly, as noted above, we have heard that most of the switching by wholesale customers to direct supply may have already happened, [ ]. We are continuing to assess the extent to which this is true across various wholesale customer types as this may impact on the extent of the constraint that direct supply would impose on the merged entity.

149. We also invite submissions on the likely degree of countervailing power that wholesale customers would be likely to have. In particular, we welcome submissions on:

149.1 the extent to which wholesale customers can and do source directly from growers, and the extent to which this may vary by produce category and location;

149.2 the significance of packhouses in direct supply, and the extent to which this may vary by produce category, grower size, and location;

149.3 how the costs may compare for wholesale customers in going direct versus via the wholesale channel; and

149.4 the extent to which wholesale customers may have already switched to sourcing directly.

Natural constraints on pricing

150. We are continuing to consider the extent to which the perishable nature of fresh produce provides a natural constraint on the ability of growers, wholesalers, and wholesale customers to move prices away from competitive levels. We invite submissions on this point, and in particular, on the extent to which this potential constraint is likely to hold across different types of produce (eg, for produce that can be stored).

Coordinated effects

151. A merger 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 such that output reduces and/or prices increase across the relevant market.[117] Unlike unilateral effects, in which a substantial lessening of competition can arise from the merged entity acting on its

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115 Commerce Commission interview with [ ].

116 Commerce Commission interview with [ ].

117 Or, in acquisition markets, prices decrease (or commission rates increase).

own, coordinated effects require some, or all, of the firms in the market to act in a coordinated way.[118]

152. Successful coordination requires firms to reach at least an implicit agreement, and then to maintain that agreement by detecting and punishing any firm that deviates from that agreement.[119]

JPT's views

153. 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:[120]

153.1 the Parties' combined share is not large enough to enable effective coordination;

153.2 the relevant market is dynamic and characterised by many competitors of varying sizes and business models;

153.3 barriers to entry and expansion are low and expansion occurs regularly; and

153.4 retail customers have significant countervailing power and can bypass wholesalers (and, increasingly retailers) altogether.

Our preliminary view

154. Our assessment is considering whether there are factors that make the relevant markets vulnerable to coordination and whether the Proposed Acquisition would introduce changes that are more likely to support coordination by making it more likely, more complete, or more sustainable.

155. We are not yet satisfied that the Proposed Acquisition would not change the conditions in any of the relevant markets, such that coordination would be more likely, complete, or sustainable.

156. Consistent with the Commission's findings in the T&G/Freshmax determination, in our preliminary view, the two sets of relevant markets each have some features that may make them vulnerable to coordination. For example:

156.1 relatively homogenous products;

156.2 the 'full service' wholesalers have some information on each other's prices and volumes, for both acquiring and selling produce; and

156.3 the intermediary market is concentrated between only a few large wholesalers. These firms interact regularly over time with growers and customers and across a number of related markets.

118 Mergers and Acquisitions Guidelines above n5 at [3.84].
119 Mergers and Acquisitions Guidelines above n5 at [3.88].
120 The Application at [111].

157. However, we also consider that the relevant markets have other features that may make coordination unlikely. For example:

157.1 demand for fresh produce is not stable and supply is volatile, so prices change regularly;

157.2 the perishable nature of fresh produce may incentivise growers and wholesalers to compete to clear produce before it spoils; and

157.3 the acquisition and supply markets are not characterised by high levels of price transparency (where coordinated effects are more likely in markets with transparent prices).

158. As part of our consideration of potential coordinated effects arising from the Proposed Acquisition, we are continuing to consider the impact of:

158.1 the concentration at the wholesale level – ie, a reduction from three to two major ‘full service’ wholesalers;

158.2 similarities or differences in the remaining ‘full service’ wholesalers’ business models and terms of trade, and the relevance of those for the ability to co-ordinate; and

158.3 the extent of any constraint provided by growers’ and wholesale customers’ ability to deal directly with another.

159. We are continuing to assess the extent to which the Proposed Acquisition may make coordination more likely, complete, or sustainable in any relevant market. We welcome submissions on this and the above points.

Vertical effects

160. 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 entity a greater ability and/or incentive to engage in conduct in a market that raises rivals’ costs in a related market and prevents or hinders rivals from competing effectively in that market (which we refer to as “foreclosing rivals”).[121]

161. Our approach to assessing whether vertical effects are likely to arise from the Proposed Acquisition is to consider whether:

161.1 the merged entity may have the ability to foreclose competitors through having market power at one or more levels of the supply chain and having a mechanism through which to raise the costs of its rivals in a related market;

161.2 the merged entity may have the incentive to foreclose competition (because it is more profitable to foreclose than to continue to purchase from those rival growers in the same way); and

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121 Mergers and Acquisitions Guidelines above n5 at [5.1]-[5.15].

161.3 the lost competition from the foreclosure amounts to a substantial lessening of competition.

Our preliminary view

162. In this case, T&G Fresh is vertically integrated and grows some of the produce that it supplies to wholesale customers. JPT/Fresh Direct does not grow its own produce.

163. We are considering whether the Proposed Acquisition would increase the merged entity's ability and incentive to use its position in wholesale supply to foreclose upstream rivals (ie, growers) through:

161.1 a refusal to purchase from independent growers produce that competes with T&G Fresh's own-grown produce (total foreclosure); or

163.2 self-preferencing or prioritising the sale of its own-grown produce at the expense of produce supplied by independent growers (partial foreclosure).

164. While JPT is not vertically integrated into growing (and so there would be limited to no additional vertical integration as a result of the Proposed Acquisition), the Proposed Acquisition would remove Fresh Direct as the only 'full service' wholesaler without material growing operations.[122]

165. We received submissions raising concerns that post-acquisition, the merged entity may be incentivised to prioritise its own-grown produce over the produce supplied by independent growers (eg, by selling their own-grown produce first, at better prices, while produce from independent growers may 'sit on the floor' for a long time and then be sold at lower prices).[123]

166. While T&G Fresh's own-grown produce currently represents [ ] of the produce that it wholesale supplies,[124] we are considering whether there are any particular categories for which T&G Fresh grows a proportion of the produce that it wholesale supplies and for which third party growers may face a higher risk of foreclosure. We will consider the produce categories where both T&G Fresh and MG are vertically integrated into growing.

167. We are still investigating the impact that the Proposed Acquisition may have on the merged entity's ability and incentive to foreclose rival growers. In particular, we are continuing to investigate, and welcome submissions on:

167.1 T&G Fresh's current approach to wholesale supplying the categories in which it also grows produce;

[122] As mentioned above, MG's subsidiaries include Southern Paprika (which grows tomatoes and capsicum), JS Ewers (a range of produce including tomatoes, capsicum, eggplant, greens and melons), Kaipaki Berries (strawberries, raspberries, blackberries), and New Zealand Fruit Free Company (which grows apples, apricots, nectarines, peaches, cherries, plums, citrus, root stock).

[123] Submissions from Anonymous A (20 July 2026) at section 4, Anonymous D (21 July 2026) and M Kuttapan (21 July 2026).

[124] [ ]

167.2 previous instances of T&G Fresh self-preferencing or prioritising its own-grown produce over that supplied by independent growers;

167.3 the importance for growers of Fresh Direct as a non-vertically integrated wholesale option;

167.4 the importance to wholesalers of supply relationships with independent growers and the extent to which that may constrain potential foreclosure post-acquisition; and

167.5 any other potential constraints on the merged entity.

Next steps in our investigation

168. We are currently scheduled to decide whether or not to give clearance to the Proposed Acquisition by 5 November 2026. However, this date may be extended with the agreement of JPT 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.[125]

169. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the issues identified above.

Making a submission

170. We are continuing to undertake inquiries and seek information from industry participants about the impact of the Proposed Acquisition. We welcome any further evidence and other relevant information and documents that JPT, T&G Fresh or any other interested parties are able to provide regarding the issues identified in this SoI.

171. In Attachment A, we summarise the matters that we are interested in receiving submissions on.

172. If you wish to make a submission, please send it to us at 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 **23 September 2026**. 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 us at registrar@comcom.govt.nz so that we can work with you to accommodate your needs where possible.

173. 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 our website.

174. 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

[125] The Commission maintains a clearance register on our website at http://www.comcom.govt.nz/clearances-register/ where we update any changes to our deadlines and provide relevant documents.

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/issue		**Matters/questions we are particularly interested in receiving information on**
Market definition		
Acquisition markets	*Growers*	• Any common features (such as grower size, region; produce type, degree of perishability or seasonality; the quality or grade of produce) that might affect the nature and number of credible alternative buyers and routes to markets for growers' fresh produce • The proportion of New Zealand fresh produce growers that currently can or do sell direct to large wholesale customers (such as supermarkets, other retailers, food service customers), including by revenue or share of supply • The proportion of New Zealand fresh produce growers for whom selling direct is not a feasible option • The role of freight and other transport costs in setting the geographic parameters for supply and demand, including any industry rules of thumb by which growers and buyers make decisions on where and who to transact with • Examples of growers that sell to buyers outside of their region(s) of supply and why they do this (eg, we are aware that cherries are largely grown in Central Otago, with some also grown in the Hawke's Bay. Wholesale buyers outside of these regions will likely seek supply from growers in these regions. We are interested in other such examples)
	Wholesalers	• The role of freight and other transport costs in setting the geographic parameters for supply and demand, including any industry rules of thumb by which growers and buyers make decisions on where and who to transact with • Examples of buyers that seek supply from growers outside of the region that they plan to sell the produce from and why they do this (eg, we are aware that cherries are largely grown in Central Otago, with some also grown in the Hawke's Bay. Wholesale buyers outside of these regions will likely seek supply from growers in these regions. We are interested in other such examples) • The extent to which wholesale distributors that do not run physical (or online) markets (such as Seeka, Primor Produce, Bidfood, and other similar firms) compete with the Parties to acquire fresh produce across the full range of growers that the Parties would typically that the Parties would typically engage with, or would have the ability to expand to do so in the event of a SSNDP
	Merging parties	• The extent to which the ability to export fresh produce should be considered in our approach to defining markets

Party/issue		Matters/questions we are particularly interested in receiving information on
Supply markets to wholesale customers	*Wholesalers and wholesale customers*	• The extent to which competition between wholesalers may occur at a national level (as distinct from local or regional competition) • The extent to which wholesalers that do not run physical (or online) markets for the sale of fresh produce compete with the Parties • The extent to which other market participants could easily, quickly, and profitably change business models to provide a wholesale service • The extent to which product range is an important feature of competition • The role of 'full service' wholesalers in regional markets, where no physical markets are present
Unilateral effects in acquisition markets		
Approach to assessing unilateral effects in acquisition markets	*Merging parties*	• The appropriate economic model to apply • Our proposed approach of giving more detailed focus to specific markets as part of our assessment • The best approach for selecting any such markets
Closeness of competition	*Growers*	• The nature and intensity of competition between the Parties for the acquisition of fresh produce • The extent to which the Parties actively seek to win volumes from growers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them) • The extent to which the competition between the Parties may vary by produce category/type, location, grower size, or other factors • The importance of the models through which the Parties interact with growers (ie, traded or consignment) and the relative merits and limits of each so far as growers are concerned • The extent to which competition between the Parties would be lost with the Proposed Acquisition.
	Merging parties	• The extent to which the Parties actively seek to win volumes from growers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them)
Constraint from MG	*Growers*	• The nature and intensity of competition between the Parties and MG for the acquisition of fresh produce

Party/issue		Matters/questions we are particularly interested in receiving information on
		• The extent to which the Parties and MG actively seek to win volumes from growers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them) • The extent to which growers can reallocate their volumes between the Parties and MG • The extent to which independent growers (ie, non-shareholders) can and do supply MG • The extent to which MG's co-operative structure and vertical integration in specific produce categories may affect its incentives to transact, and the ways in which it transacts, with non-shareholder growers in these categories • The extent to which the competition between the Parties and MG may vary by produce category/type, location, grower size, or other factors
	MG	• The nature and intensity of competition between the Parties and MG for the acquisition of fresh produce • The extent to which MG actively seeks to win volumes from growers off each either of the Parties (as well as the frequency with which this occurs and any specific examples that can be provided of growers switching between them) • The extent to which independent growers (ie, non-shareholders) can and do supply MG • The extent to which MG's co-operative structure and vertical integration in specific produce categories may affect its incentives to transact, and the ways in which it transacts, with non-shareholder growers in these categories • The extent to which the competition between the Parties and MG may vary by produce category/type, location, grower size, or other factors
Constraint from other wholesalers	*Growers*	• The extent of the constraint from wholesalers other than MG in the acquisition of fresh produce, and the extent to which this may vary by produce category, location, or other factors.
Barriers to entry/expansion	*All industry participants*	• Any recent entry by new players • Any barriers to entering or expanding into any particular categories or types of produce
	Wholesalers	• Any plans from wholesale distributors to expand further into wholesale supplying new categories or regions, or growing new produce types/categories upstream

Party/issue		Matters/questions we are particularly interested in receiving information on
		• Any plans of wholesale distributors to expand into a similar model as the Parties and MG (ie, operating market floors with a 'full service' offering) and/or any barriers to doing so
Countervailing power	*Growers*	• The extent to which growers can and do supply direct to wholesale customers, and the extent to which this may vary by produce category, grower size, and location • The extent to which growers can and do supply direct to the supermarkets, and the extent to which this may vary by produce category, grower size, and location • The extent to which growers would supply direct to wholesale customers (including supermarkets) in the future, if for example, the merged entity were to reduce prices/increase commission rates or offer worse terms or reduced services to growers • The significance of packhouses in direct supply, and the extent to which this may vary by produce category, grower size, and location • How the costs may compare for growers in going direct versus via the wholesale channel
Natural constraints on pricing	*Growers and wholesalers*	• The extent to which the perishable nature of fresh produce provides a natural constraint on the ability of growers and wholesalers to move prices away from competitive levels • The extent to which this potential constraint is likely to hold across different types of produce (eg, for produce that can be stored)
Unilateral effects in supply markets to wholesale customers		
Closeness of competition	*Wholesale customers*	• The nature and intensity of the competition between the Parties for the supply of fresh produce to wholesale customers • The extent to which the Parties actively seek to win business from wholesale customers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of wholesale customers switching between them) • The extent to which the competition between the Parties may vary by produce category/type, location, customer size or type, or other factors
	Wholesalers	• The extent of any dynamic constraints that would likely be faced by the merged entity, such as the incentive to maintain a broad customer base and to limit the longer-term trend of customers moving to direct relationships with growers, and whether this is likely to constrain the merged entity from increasing wholesale prices

Party/issue		Matters/questions we are particularly interested in receiving information on
	Merging parties	• The extent to which the Parties actively seek to win business from wholesale customers off each other (as well as the frequency with which this occurs and any specific examples that can be provided of wholesale customers switching between them) • The extent of any dynamic constraints that would likely be faced by the merged entity, such as the incentive to maintain a broad customer base and to limit the longer-term trend of customers moving to direct relationships with growers, and whether this is likely to constrain the merged entity from increasing wholesale prices
Constraint from MG	*Wholesale customers and MG*	• The extent to which the constraint from MG on the merged entity would vary by location, customer size, or other factors
Constraint from other wholesalers	*Wholesale customers*	• The extent of the constraint from wholesalers other than MG in the supply of fresh produce, and the extent to which this may vary by produce category, location, or other factors.
Countervailing power	*Wholesale customers*	• The extent to which wholesale customers can and do source directly form growers, and the extent to which this may vary by produce category and location • The significance of packhouses in direct supply, and the extent to which this may vary by produce category, grower size, and location • How the costs may compare for wholesale customers in going direct versus via the wholesale channel • The extent to which wholesale customers may have already switched to sourcing directly
Natural constraints on pricing	*Wholesale customers*	• The extent to which the perishable nature of fresh produce provides a natural constraint on the ability of wholesale customers to move prices away from competitive levels • The extent to which this potential constraint is likely to hold across different types of produce (eg, for produce that can be stored)
Other effects		
Coordinated effects	*All industry participants*	• Whether the Proposed Acquisition would change the conditions in any of the relevant markets such that coordination would be more likely, complete, or sustainable
Vertical effects	*Growers and the merging parties*	• T&G Fresh's current approach to wholesale supplying the categories in which it also grows produce • Previous instances of T&G Fresh self-preferencing or prioritising its own-grown produce over that supplied by independent growers

Party/issue		Matters/questions we are particularly interested in receiving information on
		• The importance for growers of Fresh Direct as a non-vertically integrated wholesale option • The importance to wholesalers of supply relationships with independent growers and the extent to which that may constrain potential foreclosure post-acquisition • Any other potential constraints on the merged entity