

SUBMISSION ON

Commerce (Promoting Competition and Other Matters) Amendment Bill

4 February 2026

To: Economic Development, Science and Innovation Committee

Name of Submitter: Horticulture New Zealand

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HortNZ's Role

Background to HortNZ

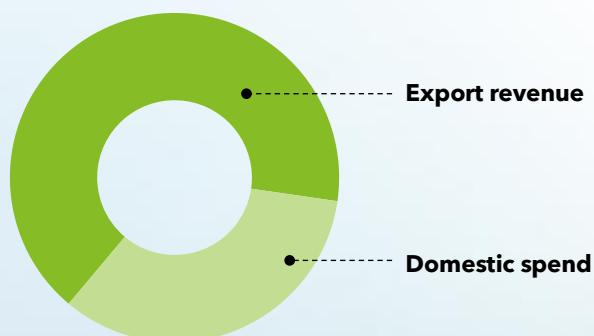
HortNZ represents the interests of approximately 4,300 commercial fruit and vegetable growers in New Zealand who grow around 100 different fruits and vegetables. The horticultural sector provides over 40,000 jobs.

There are approximately 80,000 hectares of land in New Zealand producing fruit and vegetables for domestic consumers and supplying our global trading partners with high quality food.

It is not just the direct economic benefits associated with horticultural production that are important. Horticulture production provides a platform for long term prosperity for communities, supports the growth of knowledge-intensive agri-tech and suppliers along the supply chain, and plays a key role in helping to achieve New Zealand's climate change objectives.

The horticulture sector plays an important role in food security for New Zealanders. Over 80% of vegetables grown are for the domestic market and many varieties of fruits are grown to serve the domestic market.

HortNZ's purpose is to create an enduring environment where growers prosper. This is done through enabling, promoting and advocating for growers in New Zealand.



Industry value \$7.54bn
Farmgate value \$4.89bn
Export revenue \$4.99bn
Domestic spend \$2.55bn

Source: HortNZ Annual Report 2025

Executive Summary

Horticulture New Zealand (HortNZ) supports the overall intent of the Commerce (Promoting Competition and Other Matters) Amendment Bill to strengthen competition settings and improve the effectiveness of enforcement, particularly in concentrated grocery and horticultural supply chains. The Bill introduces a number of important reforms that, if implemented well, have the potential to materially improve outcomes for growers and suppliers.

HortNZ supports the introduction of a statutory notification pathway for collective bargaining but is concerned that the proposed \$3 million threshold for small business collective bargaining is too low to be workable in a horticultural context. While individual growers are often small businesses, effective collective bargaining requires groups of growers to act together to achieve sufficient scale. In practice, modest groups of small growers can exceed the threshold quickly, which risks excluding them from the notification regime and undermining the purpose of the reform. HortNZ recommends that the threshold be increased to ensure the pathway is accessible in practice to the grower groups it is intended to support.

HortNZ strongly supports the Bill's strengthened confidentiality provisions. Extending the duration of confidentiality orders, increasing penalties for unauthorised disclosure, and limiting disclosure of confidential information under the Official Information Act (OIA) will provide significantly greater protection for sensitive commercial information. These changes directly address suppliers' well-founded fear of retaliation or loss of market access and are critical to enabling suppliers to engage more openly and confidently with competition enforcement processes.

HortNZ also strongly supports the introduction of explicit protections against retaliation and victimisation for individuals who assist the Commerce Commission. The risk of retaliation can deter legitimate complaints and undermine enforcement. Clear prohibitions, backed by strong enforcement tools, are a necessary and proportionate step to support whistleblowers, strengthen evidence gathering, and improve the effectiveness of the competition regime.

Finally, HortNZ supports the Bill's reforms to the undertakings framework. Strengthening the enforceability of behavioural undertakings, enabling early court intervention where breaches are likely, and clarifying that acceptance of undertakings remains within the discretion of the Commerce Commission will make undertakings a more credible and effective regulatory tool. Limiting appeal rights to questions of law will also reduce delay and uncertainty, helping ensure undertakings are not used strategically to avoid meaningful competition outcomes.

Submission

1. Collective Bargaining

HortNZ supports the introduction of a statutory notification pathway for collective bargaining but is concerned that the proposed \$3 million threshold for small business collective bargaining may be too low to be workable. While individual growers may be small businesses, effective collective bargaining often requires groups of growers to act together to achieve sufficient scale. In practice, the aggregated value of production across a modest number of growers can exceed the threshold quickly.

12 growers want to bargain together for a standard set of supply terms.

- Each grower: \$400k of product per year (small to medium)
- Group total: $12 \times \$400k = \$4.8m$

They are still small growers in any normal sense, but the collective value is over \$3m, so they don't qualify for the notification pathway.

HortNZ recommends that the threshold be increased. Without such changes, the collective bargaining pathway risks being unavailable in practice to the very groups it is intended to support.

2. Strengthening of Confidentiality

HortNZ strongly supports the strengthened confidentiality protections in new sections 100 and 100AA. The Bill would allow the Commission to issue confidentiality orders that last for up to 10 years after a matter has finished, replacing the current limit of just 20 working days. During this period, protected information would sit outside the Official Information Act (OIA), and there would be much stronger penalties for unauthorised disclosure.

The Bill also introduces a new rule that information supplied to the Commission in confidence cannot be disclosed at all - including under the OIA - unless specific, limited conditions are met. These protections would generally apply for 10 years, with the ability to extend in exceptional cases, but would still be subject to long term public record requirements.

Together, these changes provide much greater certainty that sensitive commercial information will be protected, addressing suppliers' well-founded fear of retaliation or loss of market access and enabling more open and confident engagement with competition enforcement processes.

3. Retaliation Safeguards

HortNZ strongly supports the introduction of new sections 97A and 97B, which prohibit retaliation by employers and victimisation by any person in response to individuals assisting the Commerce Commission. In concentrated grocery and horticultural supply chains, the risk of retaliation—whether through employment consequences, reduced market access, or other forms of commercial disadvantage—can deter employees, growers, and suppliers from raising legitimate concerns about anti-competitive conduct. Providing clear prohibitions, backed by meaningful enforcement tools including injunctions, pecuniary penalties, compensation, and exemplary damages, is essential to ensuring these protections are effective in practice. HortNZ considers these measures a necessary and proportionate step to support whistleblowers, strengthen evidence gathering, and improve the overall effectiveness of competition enforcement.

4. Behavioural Undertakings

HortNZ supports the Bill's changes to strengthen the undertakings framework, which will make undertakings a more credible and effective tool for managing competition risks. An undertaking is a legally binding commitment a business makes to the Commerce Commission to take, or refrain from, specified actions in order to address competition concerns - allowing conduct or transactions to proceed only if agreed conditions are met.

The Bill appropriately enhances the enforceability of undertakings by strengthening court powers to require compliance and by enabling intervention where a breach is likely but has not yet occurred. HortNZ also supports clarifying that the decision to accept an undertaking remains with the Commerce Commission as the specialist regulator, and that appeal rights are limited to questions of law.

Together, these changes reduce delay and uncertainty, improve compliance incentives, and ensure undertakings cannot be used strategically to avoid effective competition outcomes.

5. Conclusion

HortNZ supports the Commerce (Promoting Competition and Other Matters) Amendment Bill as a set of positive and necessary reforms that strengthen New Zealand's competition framework and improve its effectiveness in practice. The Bill appropriately focuses on addressing power imbalances in concentrated markets, improving enforcement tools, and creating conditions that enable market participants to engage with the Commerce Commission without fear of retaliation or commercial harm.

Taken together, the reforms represent a meaningful step forward in modernising competition settings and ensuring they operate in a way that reflects real-world market dynamics, including those faced by suppliers.