
**LINEAGE LOGISTICS NEW ZEALAND /
COLD STORAGE NELSON**

**RESPONSE TO THE COMMERCE COMMISSION'S
STATEMENT OF ISSUES**

27 May 2022

Lineage Logistics New Zealand and Cold Storage Nelson joint response to the Commission's Statement of Issues

1. Introduction

- 1.1 This submission sets out the Applicant's and CSN's response to the Commission's Statement of Issues dated 13 May 2022 (**SOI**), published in relation to the proposed acquisition of CSN (the **Transaction**).

2. Customer segmentation

- 2.1 The Commission is considering whether it is appropriate to define markets for primary product exporters and/or FMCG customers, and if so whether the geographic market for these customers might be limited to Tauranga.
- 2.2 The Parties submit that:
- (a) customer demand is such that separate customer markets are not warranted, having regard to, among other factors, the nature of export, FMCG and other customer demand, and statements made by firms who have recently announced entry in Ruakura in relation to their ability to service customers with Port of Tauranga (**PoT**) needs; and
 - (b) to the extent there are any customers who do not consider cold stores outside of Tauranga to be viable alternatives, Lineage cannot identify them (so as to impose a theoretical price increase) and in any event those customers are likely to be smaller and thus have sufficient alternatives available to them in Tauranga.
- 2.3 Finally, **[REDACTED]**. **[REDACTED]**.
- 2.4 The SOI refers to the document **[REDACTED]**. By way of background, **[REDACTED]**. Further, the majority of FMCG customers' products are distributed to supermarket distribution centres. Woolworths' and Foodstuffs' North Island distribution centres are located in Auckland and Palmerston North, not in Tauranga. **[REDACTED]**.
- 2.5 In addition, **[REDACTED]**.
- 2.6 While Tauriko is an attractive site for customers wanting to use the PoT due to its close proximity to the port (approximately 12 km), this does not make it the only viable option. As set out in the Application and Lineage's responses to subsequent information requests from the Commission, it is proximity to customers' *relevant transport corridors* that is relevant to customers' geographic preferences for cold storage. For instance, many customers exporting from PoT may prefer a site closer to their factory, which may be in, for example, the Waikato. Moreover, Lineage has no way of identifying and leveraging a particular customer's preference.
- 2.7 Indeed, announced in the last few months alone are new cold storage facilities located at Ruakura that specifically mention the ability to service PoT volumes.
- (a) Big Chill Distribution, which specialises in frozen and chilled food, has announced plans for a 13,000m² cold storage facility at the Ruakura Superhub. It is expected to open in July 2023 and will be capable of storing up to 16,000 pallets.¹ Michael Roberts, Big Chill's chief executive, has commented that:

"If you look at the Golden Triangle, that area everybody in the logistic scene talks about, we've seen for ourselves that growth of volume. Ruakura is really ideally placed there, and then you have the Waikato Expressway which, for me, nailed it...."

¹ [Ruakura Superhub gets first industrial precinct tenant: Big Chill Distribution - NZ Herald.](#)

The expressway will reduce the transit time back into the Auckland market so Ruakura is going to be a game changer for us. And if we want, we can export containers across to the Port of Tauranga.”²

- (b) Maersk recently publically announced its 45,000m² facility in the Ruakura Superhub that is scheduled to open late next year. It will include a 21,000 pallet cold store with a greenstar five sustainability rating. Maersk’s release noted that “its position adjacent to the inland port mean a seamless link to the ports of Tauranga and Auckland”.³ That Maersk, a shipping company with a strong focus on Tauranga (it has a long term partnership with Kotahi and PoT), chose Ruakura, is further strong evidence that Ruakura is well placed to service customers with PoT needs.

2.8 Additionally, as set out in detail in section 3 below, there is, in fact, land available in the Waikato/BOP region *and in Tauranga* for new entry and expansion, and certainly there are options that would operate to constrain the behaviour of incumbents who would be loath to accelerate the entry of competing cold store operates, especially where that includes firms (as noted in the SOI) actively looking to expand and which have the capital to do so.

2.9 The Commission also refers, in relation to exporters wanting to be located close to the port to make exporting more efficient, to a CSN document that [REDACTED]. Accordingly, it is not just closeness to PoT that [REDACTED] recognised as a value point. Rather, different cold storage facilities have different points of value – location being only one of them. Indeed, [REDACTED]. Ruakura, for example, is an appealing location in part because it has direct access to rail to PoT.

2.10 Another example of this is that [REDACTED].

Tauranga customer analysis

2.11 In any event, the Parties have considered the Commission’s question as to whether customers view all the cold stores listed in the Application as good alternatives. The first point is that Parties each do not believe that Tauriko, in respect of Lineage, and the [REDACTED] Te Maire, in respect of CSN, would offer services which are/could not be offered by other Tauranga-based competitors. [REDACTED].

2.12 In response to the Commission’s concerns, the Parties have each separately considered whether there are any customers located in Tauranga, who are exporting from PoT but who may not be distributing domestically to any great extent, who may have a strong preference for Tauranga over another location in the Waikato/BOP region. And, to the extent there are:

- (a) can their export needs be identified and priced separately; and
- (b) if so, can the other Tauranga providers not accommodate their needs?

2.13 The Parties believe there are no customers located in Tauranga who fit this criteria, and nor do they believe the prospect of such firms entering (when there are none today) is likely.

2.14 First, many potential customers in Tauranga are not in fact captive in Tauranga – they can also use cold storage facilities outside of Tauranga. For example, [REDACTED].

2.15 Additionally, the Parties believe the Tauranga based customers are unlikely to require high volumes of cold storage that cannot be satisfied by the remaining competitors located in Tauranga (and in a number of cases, also by self-supply).

² [Big Chill Distribution to have major footprint at Ruakura Superhub | Stuff.co.nz.](#)

³ [Maersk to open integrated cold chain facility in New Zealand | Maersk Press Release | Ruakura Superhub lures global logistics juggernaut Maersk - NZ Herald.](#)

- 2.16 In light of the above, the Parties submit that while theoretically there might be some exporters located in Tauranga that would *prefer* cold storage located close to PoT, it is not in fact clear that is the case, and to the extent it is:
- (a) they would likely switch to another local provider in response to any attempted price increase (many/most are already with those providers);
 - (b) they could credibly threaten to switch some of their domestic volumes to other providers located closer to customers/customers' distribution centre in order to protect the pricing for their export volumes; and
 - (c) self-supply is also likely to be an option for some.

2.17 Finally, **[REDACTED]**.

No other groups of customers for which it may be appropriate to define a customer market

2.18 Based on the above, the Parties submit there are no other groups of customers for which it may be appropriate to define a customer market.

3. Land for entry is available in Tauranga

- 3.1 The Commission appears to have gathered evidence that barriers to entry and expansion in the wider Waikato/BOP region are sufficient to impose a meaningful constraint on Lineage, with multiple Commission interviews confirming there are potential entrants who could enter to compete with Lineage, and that this is attractive given the region is under-served for cold storage. Clearly, demand is not an issue.
- 3.2 However, the SOI sets out that the Commission is not yet satisfied the LET test is met in respect of Tauranga, noting that suitable sites in Tauranga may not be available in a timely manner. The Commission has, again, referenced **[REDACTED]**. The Commission is also considering the capital cost of entry and barriers to obtaining sufficient customers, which is addressed in section 4 below.
- 3.3 While the Parties consider the appropriate geographic market is the Waikato/BOP region, the Parties submit there is sufficient land / sites available in both Tauranga specifically, and the broader Waikato/BOP region, such that availability of land does not operate to preclude the threat of entry constraining the behaviour of incumbents.

Threat of entry will constrain Lineage

- 3.4 The underlying question is whether the threat of entry will constrain Lineage's behaviour post-Transaction. The Parties consider that it does.
- 3.5 If Lineage were to attempt to increase prices above competitive levels, it would likely result in aggrieved customers in Tauranga encouraging the likes of Big Chill, Icepak, Americold and others to enter the area, or those customers being highly receptive to enquiries from such firms as to whether they might be interested in a new site. This is particularly the case in an environment where there is clearly strong and growing demand in the region, and operators actively considering expansion opportunities.
- 3.6 In addition to the Ruakura Superhub mentioned in the SOI, the Parties note again that there is further appropriate land available at the Tauriko Business Estate (with additional land being rezoned to industrial / light industrial) and the Rangiuru Business Park (which is more than twice the size of Tauriko).⁴ Both the Tauriko Business Estate and the Rangiuru Business Park are part of

⁴ As set out in the Application at paragraphs 16.17.

the greater Tauranga area and would be efficient options for new entrants, including those looking to serve customers that have a preference for Tauranga-based cold storage.

- 3.7 While the further analysis of land availability set out below reveals entry could come sooner, even if actual entry were two or even three years away, that still constrains Lineage – why provide any further incentive for that entry by seeking to increase pricing in Tauranga (even if that were possible, which is denied)? That the entry might be two or even three years away, rather than one-two, does not in any way reduce the threat of that entry, given the nature of this market and the implications of encouraging further entry. In the Parties' view, the growth of PoT compared to Ports of Auckland, and the availability of land now and when Rangiuru and the further Tauriko sites are on stream, means further entry by cold store operators is inevitable, and so why displease customers and create a greater exposure to that entry?
- 3.8 The Parties provide as **Annex 1 [REDACTED]**.
- 3.9 Further, **[REDACTED]**. As the proposal is still at an early stage, no other information was able to be disclosed other than tacitly implying that it is near Tauranga. Suffice to say more industrial zoned land is likely to become available in the future, albeit the timing appears unknown.
- 3.10 While the Parties consider the appropriate geographic market is the Waikato/BOP region, to further demonstrate availability of appropriate land in Tauranga, we refer to **Annex 2, [REDACTED]**:
- (a) **[REDACTED]**;
 - (b) **[REDACTED]**; and
 - (c) **[REDACTED]**.
- 3.11 Of the sites above, Lineage considers that **[REDACTED]**. The developer of this land is currently making industrial land available, more quickly than expected. **[REDACTED]**.
- 3.12 As Tauriko estate opens up (where the Lineage construction site is) there have been multiple sales over the last 2 years – **[REDACTED]**. **[REDACTED]** Lineage's land at Tauriko. There is also a pipeline of future opportunities. While these are to become available in early 2025, Lineage notes that a development will need to go through design, permitting and tendering, ahead of title and construction. Put another way, pricing by Lineage post-Transaction that encouraged entry would be likely to trigger the decision to enter and commencement of that entry process (and all the attendant ramifications) in the short term.
- 3.13 In the context of the Lineage's Tauriko business case, **[REDACTED]**. However, with Tauriko rezoning complete and subdivision underway, there is a consistent pipeline of land over the coming three years for potential competitors.
- 3.14 The Parties also refer to Annex 3, **[REDACTED]**.
- 3.15 It is also worth noting that the **[REDACTED]** were prepared under some urgency and hence it is possible additional sites are available. More generally, in many cases transactions will occur where properties are not publically listed or known in the 'industry' as available for sale or lease, e.g. because an agent knows a landlord might be willing to sell for the right price, etc., or certain landlords/land owners are asked if they are interested in leasing/selling.
- 3.16 In summary, Tauranga is New Zealand's fifth most populous city. It has experienced strong growth and as part of that, large tracts of industrial land have recently been, are currently being, and are planned to be, developed. While the Parties consider the appropriate geographic market is the Waikato/BOP region, in their view, it cannot be the case that a city of the nature and size of Tauranga could be said to be so constrained as to industrial land that Lineage could ignore the

threat of entry, especially given demand is growing and it being a region where competitors are actively looking to grow.

- 3.17 The Commission also notes that the resource consent process in Tauranga adds another layer of difficulty to finding a new site. The Parties accept that there is a process to go through, but the Parties do not believe that process operates as a barrier which would insulate Lineage from this threat of competition. There have been a host of developments in Tauranga which confirm that resource consent, while needed, is not a meaningful impediment to entry.
- 3.18 More generally, the resource consent process has not constrained the entry / expansion of cold storage in the region, which includes Lineage's planned entry at Tauriko, [REDACTED], and Big Chill's and Maersk's entry at Ruakura.
- 3.19 Finally, more generally, it is worth noting that the potential overlap arising from this Transaction flows from Lineage's own entry into Tauranga [REDACTED]. In the Parties' view, there is nothing special about that entry which would not similarly apply to other operators wishing to enter.

4. Other matters

Capital cost of entry and obtaining sufficient customers

- 4.1 The Parties submit that the capital cost of entry and obtaining sufficient customers do not present relevant constraints on entry/expansion because, as noted in the SOI, demand for storage in the Waikato/BOP region is high and not forecast to decrease. This means that expected demand is likely to be sufficient to recover capital cost of entry in a reasonable timeframe and obtaining new customers is unlikely to be difficult (particularly with there being evidence of customers switching and using multiple suppliers).
- 4.2 The numerous examples of new entry and expansion in both the Waikato/BOP region and in Tauranga evidence this proposition, which is further supported by the comments in the SOI relating to other firms looking to enter, including with the capital to do so.
- 4.3 Again, the relevant question is whether Lineage would be likely to increase prices or drop service levels because it considered access to capital would constrain entry or expansion. For completeness, it does not.

Freight costs

- 4.4 The Commission has also referenced a [REDACTED]. However, this is not always the case. The Ruakura Inland Port will allow for consolidation in large trains, reducing the cost of transport, and is likely to have special container arrangements. [REDACTED].

China export licences do not present a barrier and [REDACTED].

- 4.5 While it is correct that it is currently taking a long time to obtain export licences for China (for example, [REDACTED]), and holding a licence is a potential advantage in the market, the Parties believe this is the case for all new licence applications in the cold storage industry. The disadvantage in not having a China export licence [REDACTED].
- 4.6 [REDACTED].
- 4.7 Importantly, while China export licences may be difficult to obtain, the Transaction [REDACTED]. Of the cold stores in Tauranga (listed in the Commission's market share tables in the SOI), only four – CSN Sulphur Point, Real Cool, Maleme and Icepak Waharoa – appear to have China

export licences.⁵ In fact, if anything, these competitors will have an advantage over [REDACTED].

Supply side substitutability

- 4.8 The Commission [REDACTED] that there “can be some cost and time involved in switching between different storage methods”, although the Commission also noted that switching may be desirable if an opportunity arises.
- 4.9 [REDACTED] the cost and delay referred to [REDACTED] was in relation to changes in racking, rather than changes in temperature, [REDACTED].
- 4.10 [REDACTED].
- 4.11 Once a room is empty it is just a matter of day(s) to warm it to the right temperature. Cooling down a room in a cold storage facility takes longer, say, a week between different levels. However, this does not present a barrier to supply-side switching.
- 4.12 Finally, [REDACTED].

Countervailing power and sponsoring new entry

- 4.13 The Commission has received market feedback that the capital cost of entry can present a barrier to self-supply. The Parties accept that threats of self-supply are likely to be most credible for larger suppliers that have larger scale. That said, the Parties’ consideration of customers in Tauranga indicates there are numerous customers, including those with small volumes, that self-supply cold storage in Tauranga.
- 4.14 While [REDACTED].

Ability of national customers to credibly threaten to switch in other regions

- 4.15 The Commission has sought submissions on the ability of national customers to credibly threaten to switch in other regions. Lineage can point to the following specific examples of customers leveraging their national business to obtain more competitive terms:
- (a) [REDACTED].
- (b) [REDACTED].
- (c) [REDACTED].
- (d) [REDACTED].

No increased potential for coordinated effects

- 4.16 The Parties agree with the Commission’s preliminary conclusion that the Transaction will not make coordination on price, quality or innovation significantly more likely, complete or sustainable (irrespective of market definition). The Parties consider that, as set out in the Application, the third party cold storage markets in New Zealand are not vulnerable to coordination, as prices are not transparent, cold storage markets consist of competitors of many different sizes and many customers have strong countervailing power, including an ability self-supply. As the Transaction does not change any of these factors, it cannot be said to facilitate the exercise of coordinated market power.

⁵ <https://www.mpi.govt.nz/dmsdocument/21065/direct>.

- 4.17 The Commission has acknowledged that evidence suggests coordination through customer allocation is not currently occurring, and concluded that the Transaction would need to make a substantial change to the market to make coordination likely.
- 4.18 In response to the Commission's concerns around coordination on customer allocation:
- (a) Lineage confirms it is not generally able to monitor which cold stores customers are using (other than where it is informed by customers of their incumbent suppliers, which generally only occurs in competitive processes); and
 - (b) as set out above, barriers to entry in the Waikato/BOP region and in Tauranga are not high.
- 4.19 Accordingly, the Parties submit that the impact of this will not make coordination any more likely.